

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
  
Plaintiff-Appellee,  
  
-against-  
  
CARMINE TRAMUNTI, et al.,  
  
Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

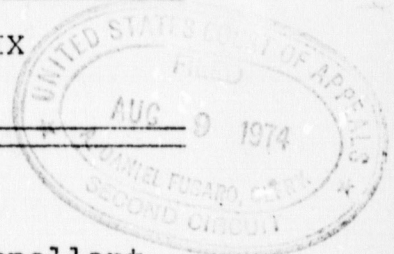
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DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(13) - Pages 1895 to 2044

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1895

2 UNITED STATES OF AMERICA  
3 vs.  
4 CARMINE TRAMUNTI, et al.

73 Cr. 1099

5 New York, February 13, 1974;  
6 10.10 A.M.

7 Trial resumed.  
8 - -

9 (In the robing room.)

10 MR. ELLIS: Good morning, Judge.

11 THE COURT: Does this have to be on the  
12 record?

13 MR. ELLIS: On the record.

14 Judge, on behalf of Mamone, I would like per-  
15 mission for Mamone to voluntarily absent himself from the  
16 trial on Friday, Saturday and Monday to return to Fort  
17 Lauderdale and make arrangements to sell his home down  
18 there. He has about run out of money to live and to  
19 finance this defense. I, of course, would continue to  
20 attend during those three days.

21 THE COURT: I assume you oppose it?

22 MR. PHILLIPS: Yes, your Honor, the same  
23 reasons we articulated yesterday with respect to  
24 Cerialle's application.

25 THE COURT: Let me think about it. I am not

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2 saying yes or no.

3 MR. ELLIS: I would also like to remind you there  
4 is a Puco application pending.

5 THE COURT: Does anybody has his wrap sheet?

6 MR. ELLIS: I haven't.

7 MR. CURRAN: I have it, but not in the court-  
8 room. I think we can get it.

9 THE COURT: All right. I have reread the Puco  
10 decision. If you give me his wrap sheet, I can go on from  
11 there.

12 You don't have it?

13 MR. ELLIS: Myself.

14 MR. PHILLIPS: It was a 1959 conviction. I think  
15 we are agreed on that.

16 MR. CURRAN: I have a certified copy of the  
17 conviction. It may even be exemplified, but I will check.

18 THE COURT: How old is Mamone?

19 MR. ELLIS: 33.

20 THE COURT: That works into it, too.

21 As I recall, you fellows were mentioning he was  
22 17 or something.

23 MR. ELLIS: Yes, sir.

24 MR. CURRAN: It was not a Y.O. conviction, your  
25 Honor.



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2 THE COURT: I am aware of that. I assume you  
3 are not going to bring a Y.O. conviction in?

4 MR. CURRAN: We couldn't.

5 THE COURT: Let me have the certified copy.

6 MR. CURRAN: Yes, sir.

7 (In open court, in the absence of the  
8 jury.)

9 THE COURT: Are you covering for Mr. Pollack,  
10 Mr. Panzer?

11 MR. PANZER: Yes, I am.

12 MR. RICHMAN: I am covering for Warner for the  
13 first part of the morning.

14 THE COURT: All right.

15 Mr. Siegel is here, Mrs. Rosner is here, Mr.  
16 Lopez is here, Mr. Rosenbaum -- somebody is covering for  
17 him, right?

18 Gary Sunden, is someone covering for Gary Sunden?

19 MR. FISHER: Yes, your Honor.

20 THE COURT: All right.

21 Ivan, you are here, Mr. Ellis is here, Mr.  
22 Rosenberg is here.

23 Ken Warner?

24 MR. RICHMAN: I am covering for him, your Honor.

25 THE COURT: All right.



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2 Mr. Dowd?

3 MR. SCHWARTZ: I will cover for Mr. Dowd.

4 MR. FISHER: Your Honor, may I just put one  
5 thing on the record.

6 The government is cooperating with the defense  
7 to the extent it is trying to get the precise recording  
8 equipment used by Mr. Barnaba and trying to get the check-  
9 out records with regard to the use of that equipment.  
10 That isn't available at this time.

11 I have agreed or would suggest that I be per-  
12 mitted to recross with regard to other areas and when that  
13 is produced and in the event further questions are appro-  
14 priate, I would then ask to recross Barnaba at that time.

15 THE COURT: Sure. Why not.

16 Yes, Mrs. Rosner?

17 MRS. ROSNER: In that vein, your Honor, I think  
18 the record should reflect that we have made a request of  
19 the government to know whether there are either, A, other  
20 Kel transmissions in which Inglesse's voice appears or, B,  
21 other attempts to record his voice which failed because  
22 of inaudibility or some other mechanical problem.

23 THE COURT: I gather those were turned over.

24 Is that correct, Mr. Phillips?

25 MR. PHILLIPS: Yes, your Honor.

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2 THE COURT: All right.

3 I am still wondering who is covering for Mr.  
4 Rosenbaum?

5 MR. RICHMAN: Your Honor, I am also covering for  
6 Mr. Rosenbaum. I am sorry, sir.

7 THE COURT: Okay, Mr. Richman.

8 Bring in the witness, please.

9 By the way, we will be breaking for lunch at noon  
10 today. There is a reason for it which does not necessarily  
11 involve everybody else, except it does involve one counsel  
12 that has to be out of the courtroom.

13 J O H N B A R N A B A, resumed.

14 THE COURT: Marshals, I would appreciate it if  
15 you would sit back toward the wall while the witness is  
16 testifying and when there is a break don't say anything to  
17 him while the jury is around, wait until the jury is  
18 completely out of the room if you have to say anything at  
19 all. All right?

20 MARSHALL: Yes, sir.

21 THE COURT: All right, bring in the jury.  
22  
23  
24  
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(Jury present.)

RECROSS EXAMINATION

BY MR. ROSENBERG:

Q Mr. Barnaba, you told me on cross examination

that when you met Pugliese it was some time in 1970.

Do you recall that?

A I meant '71

Q No. Do you recalling that to me I am ask-

ing.

A I imagine so, yes.

Q And then after we all got through cross

examining you you had occasion to speak to Mr. Curran,

is that correct?

A Yes.

Q When you were testifying you were giving us

the benefit of your recollection, is that correct?

A Yes.

Q And you had about 40 or 50 hours, I think you

indicated, of conversation with either Mr. Curran or Mr.

Phillips, is that correct?

A I don't know how many hours.

Q Approximately; is that right?

You then went back and spoke to Mr. Curran.

Now you tell us that the date was in 1971, is that cor-

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Barnaba-recross

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2 rect?

3 A Yes.

4 Q What did you use to refresh your recollection  
5 with respect to the year?

6 A Well, when Pugliese went to jail in October,  
7 1970 --

8 Q Just a moment.

9 MR. ROSENBERG: Your Honor, I ask that it  
10 be stricken as not responsive.

11 MR. CURRAN: Your Honor, the question was:  
12 "What did you use to refresh your recollection as to  
13 the year?"

14 MR. ROSENBERG: That's correct.

15 MR. CURRAN: And the witness was responding  
16 to that question.

17 MR. ROSENBERG: Your Honor, I was obviously  
18 referring to a memorandum or a piece of paper or some-  
19 thing.

20 THE COURT: All right.

21 Ladies and gentlemen, there is no need. Just  
22 ignore the last answer.

23 Now, did you use some memorandum or anything  
24 like that to refresh your recollection?

25 THE WITNESS: No.



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2 Q So it was as a result of a conversation between  
3 Mr. Curran and yourself that you then determined that it  
4 was 1971, is that it?

5 A I wouldn't say that. I determined that on  
6 my own.

7 Q You did determine it on your own?

8 A Yes.

9 Q When you were picked up in 1972 you then went  
10 out into the streets and you were wired up from time to  
11 time, is that correct?

12 A Yes.

13 Q And some time in April of '73 you had occasion  
14 to meet Pugliese, is that correct?

15 A Yes.

16 Q You told Mr. Curran on redirect that there was  
17 a conversation at that time with respect to coke, am I  
18 correct?

19 A Yes.

20 Q Does this conversation reflect itself in any  
21 place with respect to grand jury testimony with respect  
22 to your own handwriting of the events, any place at  
23 all?

24 A Not that I recall, no.

25 Q Not that you recall?

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A No.

Q So can I presume, then, sir, up until the time you told it to Mr. Curran yesterday, that you never had occasion to tell it to anybody else?

A I think I did before yesterday, yes.

Q But you are not certain?

A I'm pretty certain.

Q You had occasion to be wired up, you were going to meet Pugliese, is that correct?

A No, I wasn't wired when I met Pugliese.

Q Well, I didn't ask you that. I said you had occasion in the past to be wired up?

A Yes.

Q And you knew that you were going to meet Pugliese, is that correct?

A No, I didn't know, no.

Q Well, there came a time when you knew you had an appointment with Pugliese?

A Well, he called me at my house and I met him about a half hour later.

Q But your purpose after Rogers picked you up and let you go out into the street was to gather evidence by means of being wired up, is that correct? That was one of your functions, is that correct?



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A I wasn't wired all the time, no.

Q I recognize that, sir. But I'm saying one of your functions was to be wired up whenever you had an occasion to speak to somebody about narcotic transactions?

MR. CURRAN: Objection, your Honor.

THE COURT: Yes, I will sustain the objection.

Mr. Rosenberg, he said he wasn't wired all the time.

MR. ROSENBERG: I understand.

THE COURT: I think if you will reframe the thing you will get what you are looking for.

Q The purpose for Mr. Rogers to let you go out into the street was to help him gather information with respect to narcotic transactions, is that right?

A Yes.

Q You told us that Pugliese had introduced you to certain people and as a result of which you were involved in narcotic transactions, is that correct?

A Yes.

Q And there came a time when you were going to meet Pugliese, is that right?

A Yes.

Q And your purpose, as far as you were concerned,

1  
2 to help yourself was to be wired up to be able to give  
3 information with respect to narcotic transactions, is  
4 that correct?

5 MR. CURRAN: I object to the form of that,  
6 your Honor.

7 THE COURT: No, I will permit it.

8 Q Is that correct, sir? That was one of your  
9 functions; that's the reason why you were out in the  
10 Street, to involve people in narcotic conversations?

11 MR. CURRAN: I object to that, your Honor,  
12 the form of that.

13 THE COURT: That one I have to sustain.

14 Q At any rate, when you had this conversation  
15 where you say it refers to coke, you were not wired up,  
16 is that correct?

17 A No.



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2 Q Did you immediately, in April of 1973, go back  
3 and report that to anybody?

4 A I don't recall at that time.

5 Q It was pretty important that whenever you  
6 had information with respect to a narcotic transaction  
7 that you report to your contact man, wasn't it?

8 MR. CURRAN: Object to the form of that,  
9 your Honor.

10 THE COURT: No, I will permit it.

11 Q And the question, please.

12 A I recall I did, yes.

13 Q Who did you tell it to?

14 A I think it was to Sergeant O'Boyle.

15 Q When was that?

16 A Maybe the next day, two days later, somewhere  
17 in that period.

18 Q When you made up your notes --

19 A I never made notes.

20 Q You did make notes with respect --

21 A Which notes are you referring to?

22 THE COURT: Will you show him Government's  
23 Exhibit 3549 for identification. Are those the notes  
24 you are referring to?

25 A You mean the notes you have here?

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Q The notes you wrote up --

A My handwriting. I thought you meant evidence.

Q It's not there, is it?

A No.

Q You had plenty of time to reflect and plenty of time to think when you drew up those 30-some-odd pages of notes, is that correct?

A When I was making the notes I was referring to actual transactions, not conversation.

Q You did not feel that a conversation with respect to narcotic transactions was important, is that right?

A Not at that time, no.

Q When did you determine that it was important?

MR. CURRAN: Object to the form of that, your Honor.

MR. ROSENBERG: That is responsive to his question, if your Honor please. He said not at that time. I want to know at what time he thought it was.

THE COURT: I understand. Look, let me just rule on it without arguing about it.

Go ahead, answer the question that was put to you.

Mr. Reporter, would you read it back, please.



(Question read.)

A What time?

Q Yes.

A Well, I didn't really look at it that it was important. I just remembered it.

Q You told us about a transaction at Tardi's, do you recall, sir?

A Yes.

Q I think one one occasion you indicated that it was in May of 1971, another occasion you indicated it was in July and August of 1971, is that correct?

A Yes.

Q Right now do you know what was the right date or the right month?

A I would say August.

Q How do you fix August as opposed to May?

A Because it was right after I met Mamone outside the club on Wilkinson Avenue.

Q And that is the way you fix August?

A Which was in July. July or August.

Q In other words, as you sit here right now are you really certain?

A I am certain.

Q That it is July or August?

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Barnaba-recross

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2 A Yes.

3 Q And when you told somebody it was May, then you  
4 were mistaken?

5 A Right.

6 MR. ROSENBERG: I have no further questions,  
7 your Honor.

8 THE COURT: All right, Mr. Rosenberg.

9 Mr. --

10 MR. RICHMAN: Richman.

11 THE COURT: I know.

12 Mr. King, do you have any questions?

13 MR. KING: Recross, is that what you are ask-

14 ing?

15 THE COURT: Yes.

16 MR. KING: No.

17 THE COURT: All right.

18 RECROSS EXAMINATION

19 BY MR. RICHMAN:

20 Q Good morning, Mr. Barnaba.

21 A Good morning.

22 Q I am Murray Richman, Mr. Tolopka's lawyer.

23 A I know.

24 Q Mr. Barnaba, yesterday in Mr. Curran's redirect  
25 you were asked certain questions with respect to the Lalli



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brothers, Frank and Alfred Lalli.

A Yes.

Q Do you recall testifying on the 11th day of February, 1974 -- I believe that was Monday -- in the morning, directing the court's attention to page 1604 of the transcript of this trial:

"Q Did you ever receive any narcotics from them?

"A From who?

"Q From Frank or Alfred Lalli.

"A No?"

That is still your answer, isn't it?

A Yes.

Q Did you ever give them narcotics?

A Not that I recall, no.

Q So you never received nor did you ever give them narcotics?

A To the best of my recollection, no.

Q So they really weren't involved up until at least November of 1972, to your knowledge, in narcotics, were they?

A What do you mean, involved?

Q You did not receive nor did you give, did you?

1 jha Barnaba-recross 1911

2 A From me to them?

3 Q Yes.

4 A No.

5 Q So they weren't involved, right?

6 A Well, I heard conversation that they were in-  
7 volved.

8 Q You heard conversation?

9 A Yes.

10 Q But you never had any dealings with them?

11 A Actual dealings, no.

12 Q In the course of your activities as an under-  
13 cover informant you introduced an Alfred Cassarella to them,  
14 did you not?

15 MR. CURRAN: For the record, it is Cassella.

16 THE COURT: All right.

17 Q You did, didn't you?

18 A Yes.

19 Q But they weren't involved with narcotics, were  
20 they?

21 A I believe I just answered that.

22 Q All right, fine.

23 Do you recall being asked this question yester-  
24 day, page 1828 of this transcript, and giving this re-  
25 sponse.:



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"Q Did you ever introduce Al Cassella, the  
undercover police officer, to someone who you knew was not  
involved in narcotics?

"A No"?

Was that the question posed to you and was  
that the answer?

A Yes.

Q And you just told us that you introduced him  
to the Lalli brothers?

A Yes.

Q You did not know for a fact that they were  
involved in narcotics, did you? narcotics, did you?

A There was a conversation by them that they were  
involved to me.

Q When did this conversation take place

A The time you mean?

Q Yes.

A Numerous occasions.

Q When?

A From '68 on.

Q But you never had any dealings with them,  
did you?

A No.

Q By the way, you also testified that as a re-

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Barnaba-recross

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sult of your introduction Mr. Cassella made a buy from somebody, is that correct?

A He made numerous buys.

Q The person that he bought from was Frank Stasi the man who testified before you?

A I believe so.

Q As a result of your introduction?

A Yes.

Q This Al Cassella is the Allie Boy that was spoken about, is that right?

A Yes.

Q Do you recall being asked this question, Mr. Barnaba, yesterday on Mr. Curran's redirect:

"Q When for the first time, Mr. Barnaba, did you speak with anybody connected with the federal government about this case now on trial?

"A October"?

Do you remember that question and answer.

A I think I said September.

Q I show you --

THE COURT: What is the page?

MR. RICHMAN: Page 1829, lines 13 through

16.

A I remember answering September to that before



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Barnaba-recross

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at one time or another.

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Q Was it October or was it September?

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A September or --

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Q So you were in error yesterday?

6

A Pardon me?

7

Q Were you in error yesterday?

8

MR. CURRAN: Your Honor, I think the witness just said September or October, just this minute.

10

MR. RICHMAN: Your Honor, I am only referring to the court transcript, sir.

12

MR. CURRAN: I am referring to the witness' answer just given.

14

THE COURT: I still will permit the question, were you in error when you said October.

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Q Please answer the question.

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A Yes.

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Q You were in error. So you made an error as

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late as yesterday?

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A Yes.

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Q You could have made a lot of errors --

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MR. CURRAN: Objection, your Honor. --

9

Q -- over the past four, five days, Mr. Barnaba,

10

is that correct?

11

MR. CURRAN: Object to the form of that question.

12

THE COURT: Yes, the form is bad.

13

MR. RICHMAN: I would respectfully request

14

the Court to hear with me.

15

THE COURT: All right. Hold on for a second.

16

Mr. Fisher, come up here.

17

(Pause.)

18

THE COURT: All right, Mr. Richman.

19

MR. RICHMAN: Thank you.

20

Q Do you recall being asked this question, page

21

1844, line 24, by Mr. Curran yesterday:

22

"Q Have you been told by me or by Mr. Phillips or

23

by anybody connected with the federal or state government

24

that you can help yourself by lying at this trial?

25

"A No."



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Barnaba-recross

Is that correct?

Q "No, sir," that was your answer.

Did you come to that conclusion on your own?

A On my own? Yes.

Q Did you come to the conclusion that you can help yourself by lying on your own?

A No.

MR. CURRAN: Objection, your Honor. That is not the testimony.

THE COURT: I don't believe it was the testimony.

Q Directing the Court's attention to page 1837, line 6, were you asked this question:

"Q Did you have or do you have any reason to want to get even with Benjamin Tolopka for anything?"

Mr. Curran asked that question. Your answer was "No, none whatsoever," right?

A Yes.

Q You testified on Monday, on the 11th, that you didn't trust Ben Tolopka, is that correct?

A I don't think I ever said that.

Q You didn't say that?

A In those words?

Q I had asked you about whether you liked Ben Tolopka. You said one way or the other, you didn't

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Barnaba-recross

2 care --

3 A I said one way or the other, I had nothing against  
4 him. And there was nothing mentioned about trust.

5 Q Nothing mentioned about trust?

6 A Not that I recall.

7 Q Directing your attention to the conversations  
8 concerning your relationship with Ben, you said that after  
9 this alleged second transaction you didn't want to have  
10 anything to do with him, is that right?

11 A I recall that.

12 Q I had asked you why and you said you didn't want  
13 to deal with him.

14 A That's right.

15 Q Then I made reference to the fact that you had  
16 a record and he was a former police officer and you laughed.  
17 Do you recall that circumstance?

18 MR. CURRAN: Objection, your Honor.

19 THE COURT: Is that in the record?

20 MR. RICHMAN: I am just trying to lead up to that  
21 point in the record, your Honor, to refresh the witness's  
22 recollection.

23 THE COURT: I don't know whether he laughed or  
24 not.

25 MR. RICHMAN: He smiled or he made some kind --



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Barnaba-recross

2 THE COURT: I don't know.

3 MR. CURRAN: I object to this. I don't know  
4 that his recollection has been exhausted, your Honor, in any  
5 case.

6 THE COURT: Let's hear what the next question  
7 is going to be.

8 Q I had asked you, "Well, why didn't you want to  
9 associate with Ben, why didn't you want to do business with  
10 Ben," and do you recall what your response was?

11 A No, I don't.

12 Q Isn't it a fact you said you didn't trust him?

13 A I don't recall that.

14 Q But you have no great love or affection for  
15 Ben Tolopka, is that right?

16 A I never said that either.

17 Q Did you have a great love and affection for  
18 him?

19 A To me he's just another man. . I have no --

20 Q Did you like him any better yesterday than you  
21 did on Monday?

22 A My feelings never changed towards the man, as  
23 far as a man.

24 Q But you wouldn't deal with him?

25 A Personally? No.

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Barnaba-recross

Q Why?

A I just wouldn't.

Q Why?

A I don't want to.

Q Why, 'because he is a former police officer?

A No. If that was the reason I would have never brought him the package in the first place.

Q Because he is an honorable man and you are not?

A What was that?

MR. RICHMAN: No further questions.

MR. CURRAN: Your Honor, there is a question pending. I think the witness should be entitled to answer it.

THE COURT: Go ahead. Read back the question.  
(Question read.)

THE WITNESS: Can I answer that?

THE COURT: Yes.

A I consider myself honorable.

MR. RICHMAN: No further questions, your Honor.

RECROSS EXAMINATION

BY MR. ELLIS:

Q Good morning, Mr. Barnaba.

A Good morning.

Q Mr. Barnaba, yesterday afternoon you told Mr.



1 hp6

Barnaba-recross

2 Curran about your deal with Rogers. Do you recall that?

3 A Yes.

4 Q Would you tell me what that deal was?

5 MR. CURRAN: Objection to the term "deal,"  
6 your Honor. I didn't use it.

7 THE COURT: No, I will permit it.

8 Q Go ahead, Mr. Barnaba.

9 A To go out on the street and buy narcotics from  
10 people that I knew were involved in the narcotics busi-  
11 ness.

12 Q Did you ever approach Mamone?

13 A For narcotics?

14 Q Yes, sir.

15 A Not that I recall, no.

16 Q You also testified yesterday that you sold a  
17 car to the present Mrs. Mamone, is that correct?

18 A I never did, no.

19 MR. CURRAN: Objection to that, your Honor.

20 THE COURT: He just said he didn't. I don't  
21 recall the testimony.

22 A I never testified to that.

23 Q But you knew the present Mrs. Mamone before she  
24 married Angelo Mamone, is that correct?

25 A Yes.

hp7

Barnaba-recross

1

2

Q When did you first meet her?

3

A Early 60's.

4

Q What was her name at that time?

5

A As I recall, Phyllis.

6

Q Her last name, sir?

7

A I don't recall the last name.

8

Q And you testified yesterday that you saw the present Mrs. Mamone in the Forbrick apartment. When was that, sir?

10

11

A The exact date?

12

Q The year.

13

A Like I said, early 60's, '63, '4, maybe a little later. A period of years. I had a car lot across the street from the veterinarian hospital.

15

16

Q In and around 1963 or so?

17

A '3, '4 and '5.

18

Q How old was Mrs. Mamone at that time?

19

A I wouldn't know. She was a young girl.

20

Q She was a teenager, wasn't she?

21

A A young girl, yes, sir.

22

Q A teenager?

23

A I wouldn't know.

24

Q Would it be inaccurate to say that she was a

25

teenager?



hp8

Barnaba-recross

MR. CURRAN: I object to that, your Honor.  
That has been asked and answered twice.

THE COURT: He said he doesn't know, she was a  
young girl.

Q When did you last see Mrs. Hamone?

A A long time ago. I don't recall just how long.

Q Was it during the 60's?

A I believe so, yes.

Q How old are the Forbricks, Mr. Barnaba?

A Pardon?

Q How old are the Forbricks, Mr. and Mrs. Forbrick?

A Richie I think is my age, give or take a year.

Q Isn't he in his 50's?

A No, sir.

Q How old is Mrs. Forbrick?

A About the same age, give or take a year on her  
too.

THE COURT: Hold it. How old are you?

THE WITNESS: '43.

MR. ELLIS: He testified to that.

Q Do you know whether the parents of the present Phyliss Mamone were neighbors of the Forbricks?

A Yes, I do.

Q They were, weren't they?

A Yes.

Q And, in fact, it was they who were friends of the Forbricks, not this young girl, isn't that correct?

A Their daughter you are talking about?

Q I am talking about the parents of the present Mrs. Mamone.

A They were friends, too, also, yes.

Q And their name was Zaccollillo, wasn't it?

A Yes, it was.

Q And that was Phyliss Mamone's maiden name, wasn't it?

A You just reminded me of it.

Q Yes, sir. And I correctly reminded you of it, didn't I?

A Yes.

Q And Phyliss Mamone, the present Phyliss Mamone, was a babysitter for the Forbricks in those years, wasn't



1 tp2 Barnaba-recross

2 she?

3 A That's right.

4 Q And that's why you saw her at the apartment,  
5 she was babysitting for the Forbricks' children, correct?

6 A I saw her there with Esther and Richie home,  
7 also.

8 Q Yes. But that was the reason for her being  
9 there, is that correct?

10 A Well, like I said, there were times I saw her  
11 there she wasn't babysitting.

12 Q But she was a young girl who was there and  
13 babysat for the Forbricks?

14 A I said she was a young girl, yes.

15 Q Thank you.

16 THE COURT: Mrs. Rosner.

17 MRS. ROSNER: Your Honor, I have two questions.  
18 Can I put them up here?

19 THE COURT: Yes. Keep your voice up is my only  
20 request.

21 MRS. ROSNER: No problem with that, Judge.

22 RECROSS EXAMINATION

23 BY MRS. ROSNER:

24 Q Mr. Barnaba, as I recollect your testimony  
25 correctly, the Al Cassella that you described is the person

1 tp3

Barnaba-recross

2 known as Allie Boy to whom Stasi made the sale of drugs,  
3 is that right?

4 A Yes, ma'am.

5 Q And this is the individual that you told Mr.  
6 Curran sometimes accompanied you when you were acting in an  
7 undercover capacity, is that right?

8 A Yes, ma'am.

9 Q Just to clear up who the dramatis personae  
10 are involved in making of the Kel transmission where you  
11 say Mr. Inglese's voice appears, am I correct in assuming  
12 that the participants in that conversation were Moe Lentini,  
13 Finnegan, Mr. Inglese and yourself?

14 A Yes.

15 Q And this agent Al Cassella did not participate  
16 in that conversation, is that right?

17 A No, ma'am.

18 MRS. ROSNER: No further questions.

19 MR. ELLIS: Your Honor, may I put one more  
20 question to Mr. Barnaba?

21 THE COURT: Sure.

22 RECROSS EXAMINATION

23 BY MR. ELLIS:

24 A Mr. Barnaba, do you see Mrs. Mamone in this court-  
25 room?



1 tp4 Barnaba-recross

2 A You mean in the audience?

3 Q Yes, sir.

4 A No, sir, I don't.

5 MR. ELLIS: Stand up, Mrs. Mamone.

6 Thank you.

7 THE COURT: Mr. Martin J. Siegel, do you have  
8 any questions?

9 MR. SIEGEL: No questions, your Honor.

10 THE COURT: Mr. Panzer, do you have any questions?

11 MR. PANZER: No, your Honor.

12 THE COURT: Mr. Dowd?

13 MR. DOWD: Just one minute, your Honor, if I  
14 may.

15 THE COURT: Sure.

16 (Pause.)

17 RECROSS EXAMINATION

18 BY MR. DOWD:

19 Q Good morning, Mr. Barnaba.

20 A Good morning.

21 Q Mr. Barnaba, at the beginning of your redirect,  
22 Mr. Curran asked you about Pat Dilacio and Harry Pannirello.

23 Now, they were your suppliers of drugs, weren't  
24 they, or one of your suppliers?

25 A Yes.

tp5

Barnaba-recross

Q And also Mr. Curran asked you on redirect about the discrepancy, the apparent discrepancy between statements that you made concerning when the transaction, the alleged transaction between Mr. Russo and yourself took place, whether it was May or August or September, 1971, correct?

A Yes.

Q Mr. Barnaba, do you remember telling me yesterday when I was cross-examining you that although you had said May to the agents who interviewed you in November, 1972 -- 1973, that you had changed that to August in your notes?

A Yes.

Q And you told me that twice, didn't you?

A Yes.

Q You said you had crossed out May and put in August?

A Yes.

Q Mr. Barnaba, I show you Government's Exhibit for identification 3549, page 24, and ask you to read it, and ask you if that refreshes your recollection as to what you did in your notes.

MR. CURRAN: I object to the form of this, your Honor. There is no basis for that.

THE COURT: All right, let him read it anyway.



1

2

A Are you referring to the May mentioned here?

3

Q The May with the lines under it.

4

A Yes.

5

Q Does that refresh your recollection about your notes?

6

7

A Yes.

8

Q In other words, in your notes you have May and it is underlined, correct?

9

10

A Yes.

11

Q It is not crossed out and changed to August?

12

A Right, yeah.

13

Q Right. So the testimony that you gave me yesterday about you changing your story in your notes was incorrect, right?

15

16

A No. I did change the month to August on another page in my notes. I showed you the page yesterday.

17

18

Q You showed me the page yesterday?

19

A Yeah. You had it down here and I showed you where it was crossed out.

20

21

Q You said there was an erasure there but you couldn't make it out. Do you recall that?

22

23

MR. DOWD: Your Honor, I submit I did not --

24

THE COURT: All right, let us ignore that.

25

MR. DOWD: Your Honor, I submit --

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THE COURT: Mr. Barnaba, Mr. Dowd will ask the questions, you give the answers. Let us just leave it that way.

THE WITNESS: Your Honor, could I have my notes?

THE COURT: No, no, Mr. Barnaba.

Go ahead, Mr. Dowd.

MR. DOWD: Your Honor, I submit that I did not show Mr. Barnaba his notes yesterday at any time and I ask your Honor to check the record. I think someone else might have, but I certainly didn't.

THE COURT: It may have been someone else. I stand corrected. But I brought the incident out.

All right.

Q All right, Mr. Barnaba. Let me show you your notes. Look through your notes, Government's Exhibit 3549. Read all of your notes if necessary to refresh your recollection and tell me if that refreshes your recollection as to where in your statement in respect to the incident alleging involving Frank Russo you crossed out the date May and put in September.

(Pause.)

MR. DOWD: Your Honor, may I suggest perhaps it would help Mr. Barnaba if we can have his original notes. They might be different.



1           A     I don't have them with me. They are different.  
2  
3     I will show you.

4           Q     Are they different?

5           THE COURT: If they were different he would show  
6     them to you.

7           Q     Did you say they are different or if they are  
8     different?

9           A     On my notes, the thing is crossed out and I  
10    have --

11           MR. DOWD: Your Honor, at this point I am going  
12    to ask the government to produce the unaltered notes of  
13    Mr. Barnaba.

14           MR. CURRAN: Your Honor, I --

15           THE COURT: Hold it. We have, I assume, the  
16    notes. The reference to unaltered is to be ignored.

17           Do you have the notes?

18           MR. CURRAN: Yes, your Honor. Not only will I  
19    produce them, I will offer them in evidence.

20           THE COURT: All right, Mr. Dowd, you take a look  
21    at them.

22           MR. CURRAN: And I offer Government's Exhibit  
23    3549 for identification in evidence, your Honor.

24           MR. DOWD: Objection, your Honor.

25           MR. FISHER: Objection.

MR. RICHMAN: Objection.

THE COURT: Sustained.

MR. CURRAN: Well, then, may I offer the original, your Honor, which Mr. Dowd now has?

MR. FISHER: If your Honor please, any offer by the government during recross examination seems inappropriate at best.

MR. CURRAN: Your Honor, may the record show that the original notes were handed to Mr. Dowd, who is now examining them?

MR. DOWD: Yes, your Honor.

THE COURT: Yes.

MR. CURRAN: Your Honor, may they be marked Government's Exhibit 3549-A for identification?

THE COURT: They will be so marked.

(Government's Exhibit No. 3549-A marked for identification.)

Q Okay, Mr. Barnaba, let me show you your original notes, if these are your original notes.

I ask you to look through these and tell me if that refreshes your recollection as to whether you crossed out the day of May, 1971, and inserted the date of August or September in respect to the incident of Frank Russo.

(Pause.)



Q By the way, take a look at Government's Exhibit---

MR. CURRAN: Your Honor, I wonder if we can do one question at a time?

THE COURT: Yes. Let us do it one question at a time.

(Pause.)

A It's on the photostatic copy of my notes that I have a copy. That's where I crossed it out.

Q Wait a minute. You are confusing me, Mr. Barnaba.

A No. I got confused. I thought it was on here. It was on the photostatic copy.

Q Are those your notes?

A Yes.

Q Is that your handwriting?

A Yes.

Q Did you give those to the government?

A Yes. Later on I received a photostatic copy and that's when I myself crossed it out and put in the month, and if you want them I can show them to you.

MR. DOWD: Your Honor, I think that the government has failed to give us photostatic copies of the altered notes of Mr. Barnaba.

MR. CURRAN: Your Honor, I object to the comment "altered." Defense counsel has had copies of these notes for weeks now.

The government does not have a photostatic copy --

MR. DOWD: Mr. Curran --

MR. CURRAN: May I finish my statement, Mr. Dowd. I didn't interrupt you.

Your Honor, the witness has testified that those are his original notes and that he also has a photostatic copy of those notes.

We have many photostatic copies which have been supplied to defense counsel and the court. I don't have the photostatic copy to which he is referring.

He says he can produce it and I have no objection, of course, if he does.

A There is one here --



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Barnaba-recross

2 THE COURT: All right, Mr. Barnaba, just hold  
3 on for a moment.

4 THE WITNESS: That shows the erasure, your  
5 Honor.

6 MR. DOWD: Your Honor, may we have a side  
7 bar conference?

8 THE COURT: Yes, come on up.

9 (At the side bar.)

10 MR. DOWD: Two things I want to make clear,  
11 your Honor.

12 No. 1 is a stipulation that the notes which  
13 were turned over to us was pursuant to law and not through  
14 the gratuitous efforts of Mr. Curran.

15 THE COURT: That has already been taken  
16 up and I have already told the jury about that.

17 MR. DOWD: I want the jury to know we were  
18 given copies of notes that don't contain an erasure; in  
19 fact, his personal notes contain the date May underlined.

20 MR. CURRAN: Your Honor, if Mr. Dowd listened  
21 to the testimony, I think he would understand that the  
22 original notes are in the possession of the government.  
23 The witness was given a Xerox copy of what belonged  
24 to him originally to keep in his own possession. The  
25 original notes were then Xeroxed. We have used them for

our purposes, defense counsel received copies. I assume the witness is referring to a notation which he made at some point in time on the copy which he was given to retain of his own document.

I don't think it is fair to give a witness, any witness, a copy of an original document where he gives the original to the government. That is simply the situation.

MR. DOWD: My point is simply this, your Honor. I asked specific questions about when he changed them and what notes and he talked about these notes and when he wrote them.

Now, I am saying this:

If that is true, then it puts me in a bad position, because him changing those notes is another writing, is another writing, and I'm going to --

THE COURT: Which nobody knew of before, you know, five minutes ago.

MR. DOWD: Correct.

MR. CURRAN: And which has not been and is not in the possession of the government.

MR. DOWD: He apparently knows. Mr. Curran knows. He is just telling me when he got it.

MR. CURRAN: Your Honor, all I know is I



1 gave to the witness, as I would give to any witness,  
2 a copy of the document which he gave to me. The docu-  
3 ment he gave to me was the original notes, and I would  
4 do that, your Honor, with any witness.  
5

6 I assume that is what he is referring to. I  
7 know of no other copy.

8 MR. DOWD: When did you get the original notes  
9 that he has --

10 MR. CURRAN: If you want to put me on the  
11 stand I will answer questions.

12 MR. DOWD: I think it is important, Judge,  
13 because --

14 MR. CURRAN: The original notes were received  
15 well prior to trial. I couldn't give you the date.

16 THE COURT: Yes, Mr. Siegel?

17 MR. SIEGEL: Yes, your Honor, if I may add  
18 my two cents for what it is worth.

19 The erasure he is making reference to I  
20 think refers to a question which I asked him on cross  
21 examination.

22 If you look at the document and also at the  
23 original, there is no difference between the photostat and  
24 the original as far as my point is concerned. It shows  
25 in his own handwriting the word "April" is written and

1 gta Barnaba-recross

2 underlined. He tended to deny this.

3 Your Honor, I can make reference to it.

4 THE COURT: Yes, I remember it. It is a  
5 smudge above the "April," which is blocked out.

6 MR. SIEGEL: Then it appears to be in a  
7 light pencil, which is on the original also, "May" is written  
8 in there.

9 Now he is giving the impression, I feel, that  
10 there was an alteration performed on these notes, you know,  
11 other than by him, but the writing appears to be in his  
12 handwriting "April."

13 THE COURT: Yes.

14 MR. SIEGEL: I just want this fact made  
15 known to the jury without having the potential problem of  
16 having the entire document introduced into evidence.

17 MR. CURRAN: Your Honor, I will say right  
18 now, in the light of this examination, I intend, when  
19 it comes to re-redirect, to offer that document in evi-  
20 dence.

21 MR. DOWD: Offer what document in evidence?

22 MR. CURRAN: Exhibit 3549A, 3549 for  
23 identification also, and, if you wish, anything he pro-  
24 duces. That is what I intend to do.

25 THE COURT: All right, I will take that up



when that arises.

MR. CURRAN: Your Honor, before we break up here and before you go back before the jury, I would like --

THE COURT: I have a very simple question. Is anyone asking now that this witness produce the Xerox copy which he claims he marked? Do you want that?

MR. CURRAN: I have no objection.

THE COURT: Do you want it, Mr. Dowd?

MR. DOWD: The Xerox copy?

MR. SIEGEL: I am not asking for it.

MR. CURRAN: The witness referred to a copy which he has retained which I do not have and have never had, except to make it and hand it to him.

MR. DOWD: My question is, did you give him this Xerox copy when you made all the Xerox copies? That's all I want to know.

MR. CURRAN: My best recollection is that he got a Xerox copy of the originals some time prior to that and all the Xerox were made off the original which was in our possession closer to the trial date because they were for production to defense counsel.

If you want it produced, it can be produced. I have no objection.

1 THE COURT: Do you want it?

2 MR. DOWD: I don't want it produced, not  
3 now. Let me see what happens.

4 THE COURT: All right.

5 MR. SIEGEL: Your Honor, how do you propose  
6 we handle my particular problem as far as he has made  
7 reference that the document was changed?  
8

9 He made reference there was a smudge mark  
10 and it wasn't April, but I'm sure Mr. Curran conceded  
11 the word "April" was written in his handwriting and  
12 apparently underlined.

13 MR. CURRAN: Whatever shows on the original  
14 was there.

15 MR. SIEGEL: Yes. I just don't want you  
16 to think I am putting anything over on you. There  
17 at the bottom. You see where it says "April"?

18 MR. CURRAN: Yes.

19 MR. SIEGEL: I would like the record to be  
20 clear that in fact the witness himself put the word  
21 "April" there and underlined it, because it appears to  
22 be in his handwriting.

23 MR. DOWD: Off the record.

24 (Discussion off the record.)

25 (In open court.)



1                   THE COURT:     Ladies and gentlemen, I am sure  
2                   from time to time it becomes a little tiring for you to  
3                   sit there and watch me huddling with a group of attorneys  
4                   here.     I will ask the marshals to take you out and  
5                   we will have a morning break right now.  
6

7                   (The jury left the courtroom.)  
8

9                   THE COURT:     The break, basically, was called  
10                  because Mr. Dowd wanted to go through the transcript  
11                  of yesterday's proceeding.     I don't think it should  
12                  take more than seven to ten minutes, so I want you all back  
13                  here within 10 minutes from now.

14                  We have a short morning now.     I want to get  
15                  this moving as fast as possible.

16                  (Recess.)  
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(In open court; jury not present.)

THE COURT: Mr. Dowd, are you set?

MR. DOWD: Yes, your Honor.

MR. SCHWARTZ: Your Honor, if I may, my client is not present in court. I made a phone call and I found out that he is presently in Holy Name Hospital. He took a fall last night. Although his wife indicated to me that she doesn't believe he has any fractures, she won't know until she goes to the hospital.

THE COURT: Let's add that to our 12 o'clock roster of things to harass the judge with.

MR. SCHWARTZ: I didn't trip him, Judge.

THE COURT: I know.

All right, Mr. Clerk, would you get the jury back and would you get the witness back.

(Jury present.)

THE COURT: Mr. Dowd, you may inquire.

BY MR. DOWD:

Q Mr. Barnaba, on the photostatic copy of the notes which the lawyers have that change does not appear, is that correct?

A Not that I know of.

Q On your handwritten notes, your original handwritten notes, that change does not appear from May to



August?

A The change appears on the copy that I have.

Q Not your original handwritten notes?

A No.

Q In fact, on your original handwritten notes the word "May" is underlined in a red pen of some kind, correct?

A Yes.

Q In respect to the incident involving Frank Russo?

A Yes.

Q You wrote these notes, is it correct, with a black pen, sort of a felt tip or heavy pen?

A I don't recall the pen.

Q But after you wrote it you did change some of the things in these original handwritten notes with a different pen, didn't you?

A Yes, I did.

Q On page 21 of your notes you changed the word "April" to "May" using a blue pen?

MR. CURRAN: Your Honor, might the witness look at the document?

THE COURT: Yes. Show it to the witness.

MR. DOWD: Of course, Judge.

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2 A Yes.

3 Q And you made this change after you had  
4 originally written the notes? --

5 A I had to, yes.

6 Q On page 13 in blue pen you changed the numeral  
7 71 to 70 and put your initials on it in blue pen?

8 A Yes.

9 Q And that was after you had originally written  
10 the notes? --

11 A Yes.

12 Q After that you got a photostatic copy of your  
13 notes similar to the one the attorneys have? --

14 A Yes.

15 Q And that is where you changed the month from  
16 May to August? --

17 A Yes.

18 Q Did you have those notes with you last  
19 night?

20 A No, sir.

21 Q When is the last time you had the photostatic --

22 A You mean on my person?

23 Q No. When is the last time you had this  
24 photostatic copy of the notes that you made the change  
25 on? --



A You mean when I received it?

Q No. When is the last time you had it?

A I have had it with me all along.

Q You have?

A My copy, yes.

Q This copy or a copy similar to this, a photostatic copy?

A Yes.

Q So it is impossible for us to know whether you even changed those notes last night, isn't it?

MR. CURRAN: Object to that, your Honor. Object to the form of it.

THE COURT: I will sustain the objection. to the form.

MR. DOWD: No further questions, your Honor.

THE COURT: All right, Mr. Dowd.

RE CROSS EXAMINATION

BY MR. LOPEZ:

Q Just a few questions, Mr. Barnaba.

You testified in this courtroom last Friday, isn't that correct?

A I believe so, yes.

Q And last Friday you were asked a question with regard to a conversation you had with Pat Dilacio regard-

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2 inging the attempt to get drugs from Joseph DiNapoli.

3 Do you recall that?

4 A Yes.

5 Q And at that time, on Friday, in response to  
6 a question from Mr. Curran, you indicated that that  
7 incident took place in December, 1971?

8 MR. CURRAN: I object to the form of that,  
9 your Honor.

10 THE COURT: Do you have a page number?

11 MR. LOPEZ: 1461, your Honor.

12 Q Do you recall telling Mr. Curran --

13 THE COURT: Hold on.

14 MR. LOPEZ: All right.

15 THE COURT: All right, go ahead, ask your  
16 question.

17 Q Do you recall replying to Mr. Curran's ques-  
18 tion regarding that conversation involving the name Joseph  
19 DiNapoli with regard to a conversation that you told us  
20 about that you had with someone, Pat Dilacio, who said he  
21 spoke with a Joseph DiNapoli and told you that there was  
22 no way he could give you any goods in December, 1971?

23 I am talking about what happened Friday.  
24 Do you remember that question and that answer?

25 A Yes, sir.



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Q When you went home, when you left the courtroom, wherever you went on Friday, you didn't speak with Mr. Curran, did you?

A No, sir.

Q And you didn't speak with anyone on the government's staff, did you?

A No, sir.

Q As a matter of fact, on Saturday you didn't speak with anyone either regarding your trial testimony?

A No, sir.

Q What was true on Saturday was also true on Sunday, isn't that correct?

A Yes.

Q Then you came back here on Monday and you testified some more, isn't that right?

A Yes.

Q Then after you testified again on Monday night you didn't speak with Mr. Curran, you didn't speak with Mr. Phillips and you didn't speak with anyone else, isn't that right?

A Yes.

Q Then on Tuesday morning I asked you a couple of questions, isn't that right? You recall that.

A Yes.

Q And I asked you about the conversation and you said to me in the morning and in the presence of this jury that that answer to that question was true on that morning, was true yesterday?

Didn't you say that? Isn't that right, Mr. Barnaba?

I don't hear you.

A Yes.

Q Then you came back on Tuesday afternoon and suddenly December was January, 1971 was 1972 --

MR. CURRAN: I object to the form of that question.

MR. LOPEZ: At least let me finish the question.

MR. CURRAN: I am sorry. I thought you had.

Q -- and suddenly 1971 could be 1972, isn't that correct?

MR. CURRAN: Object to the form of that, your Honor. It's argumentative.

THE COURT: It is a little argumentative.

Q On page 1850, 1850 of the trial record, were you asked this question, did you give this answer, in substance;



2 "Q Could the conversation of December, 1971  
3 have taken place in January of 1972?"

4 And you said, "Could be," isn't that right?

5 A Yes.

6 Q Let me ask you this: After we finished  
7 our little talk in the morning, cross examination, did  
8 you go some place during the lunch period?

9 A Yes.

10 Q Did you go to Mr. Curran's office?

11 A No.

12 Q Did you go to Mr. Phillips' office?

13 A No.

14 Q Did they come, Mr. Phillips or Mr. Curran,  
15 to interview you?

16 A No.

17 Q You didn't speak to anyone during that period  
18 of time?

19 A The only one I was with was the two marshals  
20 that were with me.

21 Q I am talking about Tuesday after cross examina-  
22 tion finished and before redirect started yesterday.  
23 Didn't you speak to Mr. Phillips and Mr. Curran?

24 A Oh, yes, I did.

25 Q Yes. You don't even remember what happened

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Barnaba-recross

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2 yesterday, but you are giving us information as to what  
3 happened in '70 and '71.

4 A I thought you were talking about --

5 MR. CURRAN: Is that a question, your Honor?  
6 I object to it.

7 THE COURT: Yes.

8 A I thought you meant the day before.

9 Q So you did speak with Mr. Curran?

10 A Yes, I did.

11 Q And you spoke with Mr. Phillips? Did you  
12 speak with Mr. Phillips?

13 A No.

14 Q Did you have something to eat with Mr. Curran?

15 A No.

16 Q Mr. Curran spoke to you about your testimony,  
17 isn't that right?

18 A He asked me questions and I answered them.

19 Q He brought up this matter about your conver-  
20 sation with regard to what Pat Dilacio told you with  
21 regard to what Joseph DiNapoli allegedly told him,  
22 isn't that correct, he brought it up?

23 A No.

24 Q You brought it up?

25 A No. You want to let me answer?



1 jha Barnaba-recross 1950  
2 Q No, I don't want you to answer. He will  
3 get it out the way he wants to. You answer my question.  
4 MR. CURRAN: Your Honor, the question was  
5 whether I brought it up and he said no, and he said, "You  
6 brought it up," question mark, and he started to  
7 answer and he was interrupted.  
8 MR. LOPEZ: It just calls for a yes or no,  
9 not a speech, your Honor.  
10 THE COURT: All right.  
11 Q What I want to know is this.  
12 MR. CURRAN: Your Honor, there is a question  
13 pending.  
14 MR. LOPEZ: I withdraw the question.  
15 THE COURT: All right.  
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Q What I want to know is this.

"By the way, does Mr. Curran call you Mr. Barnaba or does he call you John? What does he call you?

A Mr. Barnaba.

Q Mr. Barnaba, did Mr. Curran say to you in words or substance, "Hey, Mr. Barnaba, we got Harry Pannirello coming in as the next witness and he said to Pat Dilacio that he did get goods from Joseph Di Napoli in December.

Could your conversation have taken place in January, '72?"

Did he tell you that?

A No, sir.

Q But in any event, when you did come back here in the afternoon that conversation with Pat Dilacio of December, '71, could be January, '72, is that right?

A Possible, yes.

Q Possible?

A Yes.

Q Thank you, Mr. Barnaba.

MR. FISHER: Your Honor, may we approach the bench? I would like to renew an offer.

THE COURT: Sure.

(At the side bar.)

MR. FISHER: If your Honor please, I would like to renew my request to be allowed to inquire into the



1 --hp2

Barnaba-recross

2 witness's knowledge of the government's knowledge of his  
3 participation in loan sharking in view of certain questions  
4 brought out and answers given on redirect examination by  
5 Mr. Curran.

6 It appears from portions of that redirect  
7 examination that there was a second moment of truth, in  
8 quotes, with regard to the witness Barnaba at the point  
9 when he decided to cooperate with the federal govern-  
10 ment. The attempt was clearly made by Mr. Curran to  
11 elicit testimony to the effect that he had cooperated  
12 with the state and he felt that was all he had to do.  
13 Then the federal government came along and somehow he is  
14 persuaded to do it all over again and he wasn't happy about  
15 it.

16 If your Honor please, it may well be -- I think  
17 we should be allowed to inquire into this further area of  
18 motive -- that he was propelled by his awareness of  
19 their awareness of his loan sharking activities, which  
20 can be a very serious matter.

21 THE COURT: How do you intend to phrase your  
22 question?

23 MR. FISHER: You see, the offer stems from  
24 comments made or statements made on the transcript of the  
25 wiretap and I would try to stick very close to that.

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Barnaba-recross

I will ask him if he knew that he was wire-tapped, and he knew that he had discussed on his wired phone his involvement in loan sharking, and that "As a result of that you are aware, are you not, that the prosecuting authorities are also aware of your loan sharking activities?"

MR. CURRAN: Your Honor, with respect to that, No. 1, if the answer to Mr. Fisher's first question is no, I would assume that would end the inquiry.

MR. FISHER: Yes, it would.

MR. CURRAN: No. 2, for the record, your Honor, I would point out once again that that entire transcript of that particular wiretap to which Mr. Fisher is referring, I believe, was turned over to your Honor by the government two weeks ago, I believe a week ago Monday, two weeks ago Monday, and that I had received it the previous Saturday, which was about ten days ago.

THE COURT: You want to go straight to motive, right?

MR. FISHER: Yes.

THE COURT: How long are you going to be on recross?

MR. FISHER: No more than five to ten minutes.

MR. CURRAN: I have very little re-redirect,



1 hp4 Barnaba-recross

2 your Honor.

3 THE COURT: We are not going to get to your re-  
4 redirect because we have another attorney who wants to  
5 recross.

6 MR. CURRAN: Other than Mr. Fisher?

7 THE COURT: Yes.

8 I don't believe that you are entitled to do it,  
9 Mr. Fisher, but I think as a matter of discretion I will  
10 permit it.

11 MR. FISHER: Thank you.

12 THE COURT: All right?

13 MR. FISHER: Thank you.

14 THE COURT: In those questions.

15 (In open court.)

16 RECROSS EXAMINATION

17 BY MR. FISHER:

18 Q Mr. Barnaba, you recall, of course, being  
19 questioned on redirect examination by Mr. Curran yesterday,  
20 do you not?

21 A Yes.

22 Q And you recall prior to that that you had ad-  
23 mitted to us that you had been less than candid in your  
24 various discussions with law-enforcement officials, is  
25 that right?

1 - hp5 Barnaba-recross

2 A Yes.

3 Q -In fact, you admitted that at various points in  
4 time during these discussions you did not tell the whole  
5 truth, is that right?

6 A Yes.

7 Q On redirect examination you told us that Mr.  
8 Rogers had told you that he wanted the truth, is that right?

9 A I don't recall that.

10 Q Do you recall being asked by Mr. Curran yesterday  
11 on redirect examination whether or not Mr. Rogers during  
12 his conversation with you on the day of your arrest asked  
13 you to be truthful?

14 A Yes.

15 Q And you recall telling us in response to questions  
16 put to you by Mr. Curran that Mr. Phillips nor Mr. Curran  
17 had ever asked you to lie, is that right?

18 A Yes.

19 Q So your lack of truthfulness then was your own  
20 idea, is that right?

21 A Yes.

22 Q Mr. Barnaba, you are aware, are you not, that  
23 at one point in time your telephone was tapped?

24 A I was told later on, yes.

25 Q And you are aware, are you not, that during the



1 hp6 Barnaba-recross

2 period of the tap of your telephone law-enforcement  
3 officials were able to listen in?

4 A Yes, I imagine so.

5 Q And hear what you were saying?

6 A Yes.

7 Q And during that point in time you had discus-  
8 sions with someone regarding your activities in loan  
9 sharking, isn't that right?

10 A I don't recall that.

11 MR. FISHER: Does this have an exhibit number?

12 THE COURT: No, it does not.

13 MR. FISHER: May I ask that it be marked what-  
14 ever the Court deems appropriate, a Court exhibit or a 3500  
15 exhibit.

16 THE COURT: Let's make it a Court exhibit.

17 You just want the one page or the whole docu-  
18 ment?

19 MR. FISHER: I think it more appropriate that  
20 just this page and the one following it be deemed as the  
21 exhibit, your Honor.

22 THE COURT: All right.

23 MR. FISHER: I have no objection if Mr. Curran  
24 has any more, but I think that is all that is appropriate  
25 at this point.

1 hp7 Barnaba-recross

2 (Court's Exhibit 63 marked for  
3 identification.)

4 MR. CURRAN: Your Honor, if Mr. Fisher is now  
5 going to show the document to the witness for the purpose  
6 of refreshing recollection, which I assume he is, I would  
7 like to be heard on that issue before your Honor.

8 THE COURT: All right. Come on over.

9 (At the side bar.)

10 MR. CURRAN: Your Honor, as I understand the  
11 issue and Mr. Fisher's reasons for wanting to pursue this  
12 line of inquiry it is because "it goes to motive."

13 I would point out to your Honor the witness has  
14 said he doesn't recall any such conversations. He just  
15 said that in response to a question by Mr. Fisher.

16 The issue, I submit, your Honor, is not now  
17 whether his recollection is refreshed, but whether at the  
18 time he was cooperating with the government he had a motive  
19 to cooperate because the government was investigating him  
20 for loan sharking and he knew it.

21 Your Honor, I submit most respectfully and most  
22 urgently that since he says he doesn't recall refreshing  
23 his recollection now from his voice back then is wholly  
24 immaterial to the issue of motive. It has to have been  
25 what his motive was to cooperate and to testify, not



1 necessarily what the objective facts were back when the  
2 conversations were held.  
3

4 That is the reason for my objection to any  
5 further --

6 THE COURT: The unfortunate part is that we  
7 have to do is try and go back and find out what was going  
8 on in his head in 1972. This thing dates from on or about  
9 1972 --

10 MR. FISHER: September 8, 1972.

11 THE COURT: Under the circumstances I believe  
12 that this document would be close enough in time so that  
13 he would possibly have remembered it at the time Rogers  
14 picked him up. Under the circumstances I would let him  
15 take a look at it.

16 MR. CURRAN: But, your Honor, there has been  
17 no showing that he was even aware of a wiretap when Rogers  
18 picked him up or, indeed, when he became aware of it.  
19 In response to questions by Mr. Fisher just now he said,  
20 "I heard about that," or something like that, "I understand  
21 that happened." There was no question as to what he  
22 found out or what his understanding was.

23 I submit the fact that it happened doesn't  
24 necessarily go to motive. You have to do more than show  
25 something occurred at a particular time to get into the

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witness's mind and what his state of mind was when he was  
cooperating with the government, because that is the motive  
question.

THE COURT: Yes, I understand. However, I will  
still let it go.



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(In open court.)

BY MR. FISHER:

Q Mr. Barnaba, showing you, if I may, what has been marked as Court's Exhibit 63 for identification, I ask you to read paragraph 13 and then go over to the next page and particularly directing or inviting your attention to line 20, and I ask you if that refreshes your recollection as to whether or not on your wired telephone you did discuss your involvement in shylocking activities.

(Pause.)

A Yes.

Q Mr. Barnaba, you have indicated, have you not, that there came a time when you agreed to cooperate with the federal government, is that right?

A Yes.

Q That was some time in 1972?

A Yes.

Q And the --

THE COURT: Mr. Fisher, hold on. I think you misspoke.

MR. FISHER: I am sorry.

THE COURT: The testimony was 1973.

MR. FISHER: Thank you, your Honor.

Q And the conversation which you just inspected

1 tp2 Barnaba-recross

2 occurred, did it not, on September 8, 1972?

3 A Yes.

4 Q Shortly before you agreed to cooperate with the  
5 federal government, is that right?

6 MR. CURRAN: Objection to that, your Honor.

7 THE COURT: No. You got your dates mixed up.  
8 This was shortly before he agreed to cooperate with the  
9 state.

10 MR. FISHER: The conversation occurred -- well,  
11 shortly is a relative term, your Honor.

12 I can withdraw the question. We can all count  
13 months together.

14 Q In any event, sir, you were aware, were you not,  
15 at the time that you agreed to cooperate with the federal  
16 government that in addition to your narcotics activities,  
17 you were possibly vulnerable to a crime involving loan  
18 sharking?

19 A I wasn't aware of it, no.

20 Q That never occurred to you, sir?

21 A No.

22 Q Were you ever aware of the fact that loan sharking  
23 is a federal crime?

24 A I know it's a crime. I don't know if it's  
25 federal or state. I'm not a lawyer.



1 tp3 Barnaba-recross

2 Q You have said that many times.

3 A Yes.

4 Q And we all believe you.

5 Mr. Barnaba, are you aware of the fact, sir,  
6 under the federal loan sharking statute you could be  
7 sentenced up to 20 years' imprisonment?

8 MR. CURRAN: I object to that, your Honor, in  
9 light of the prior answer.

10 THE COURT: I know. I will sustain it.

11 Q At no point prior to this moment, sir, did it  
12 ever occur to you that the federal government, represented  
13 by Mr. Curran and Mr. Phillips, might prosecute you for your  
14 shylocking activities?

15 A This is the first I ever read -- I even knew  
16 they had that conversation. I didn't know it.

17 Q You didn't know it until this moment?

18 A That's right.

19 Q You knew your phone was being tapped?

20 A I just found out the other day, two or three days--

21 Q Just the other day?

22 A Three or four days ago.

23 Q You didn't know that until then, sir?

24 A That's right.

25 Q Were you ever given a notice?

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Barnaba-recross

A Of what?

Q Of the fact that your phone was being tapped?

A No.

Q Never, sir

A No.

Q You are sure of that?

A By whom? I don't know what you mean by  
notice.



1  
2 Q By the state or federal government that your  
3 phone was being tapped. You were never notified?

4 A That they were tapping my phone?

5 Q Yes.

6 A What do you mean, get my permission? What  
7 are you talking about?

8 Q No, Mr. Barnaba.

9 THE COURT: The question is did you ever get  
10 a notice that there had been --

11 Q After, Mr. Barnaba, within a statutory period  
12 of time after, when the government or the local authorities  
13 are required to notify you, were you notified?

14 A No. I think it was mentioned at one  
15 time by one of the officers that my phone was tapped.  
16 I don't recall when. It was after I was arrested.

17 Q But way before a couple of days ago, right?

18 A I'm talking about that I first saw that conver-  
19 sation, yes.

20 Q When did you first learn your phone was  
21 being tapped, sir?

22 MR. CURRAN: I object, your Honor.

23 THE COURT: I think we have been through  
24 this route already once, Mr. Fisher.

25 Q In any event, you knew your phone was being

1           tapped long before you took the stand in this case, is  
2           that right?

3  
4           A       Yes.

5           Q       And you knew, did you not, that you had  
6           discussed your Shylocking activities on the phone?

7           A       No, I didn't recall that.     I had a lot of  
8           conversations on the phone.

9           Q       You didn't remember that?

10          A       No.

11          MR. FISHER:     No further questions.

12          MR. SIEGAL:     May I ask two questions?

13          THE COURT:     Yes.

14       RE CROSS EXAMINATION

15       BY MR. SIEGAL:

16          Q       Mr. Barnaba, do you recall telling this court  
17       and jury the other day about two visits to Lo Piccolo in  
18       1973?

19          A       Yes.

20          Q       Were you wired on those occasions?

21          A       Two visits?     No..

22          Q       Well, are you sure?

23          A       I think on one I was, yes.

24          Q       Have you got the tape?

25          A       Have I got it --



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Barnaba-recross

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Q Yes.

A No, I don't have it.

Q Did you turn the tape over to the government?

A That I don't know.

MR. SIEGAL: Have we got a tape, Mr. Phillips?

MR. CURRAN: Your Honor, I object to the  
request in front of the jury. I don't know --

THE COURT: Yes, I would agree.

MR. CURRAN: If Mr. Siegal has a specific  
request he can, of course, talk to me.

THE COURT: Yes, all right.

BY MR. SIEGAL:

Q Mr. Barnaba, do you recall testifying before  
the grand jury?

THE COURT: Which grand jury?

MR. SIEGAL: In this case.

THE COURT: The federal grand jury?

MR. SIEGAL: The federal grand jury.

A Yes.

Q Did you tell the grand jury at any time about  
these two visits to Lo Piccolo in 1973?

A Not that I recall, no.

Q Thank you, sir.

THE COURT: All right. Does anyone else

have any questions?

All right, ladies and gentlemen. You have been more than kind with me and I am going to ask you for one more favor. As perhaps you may know, I carry a fair case load. I don't have a one-case-at-a-time situation; it is more like around 600.

There is something that came up in another case and I promised that I would take care of it over the luncheon period, so if you would bear with me we are going to take our lunch break early today and you can go with the marshal.

Mr. Marshal, take the jury out, please.

(The jury left the courtroom.)

(The witness left the courtroom.)

THE COURT: Mr. Fisher, you can leave.

MR. FISHER: Thank you, your Honor.

THE COURT: Be back here at 2 o'clock.

(Luncheon recess.)



AFTERNOON SESSION(2:00 p.m.)

(In open court; jury not present.)

THE COURT: I understand there are some applications. I will answer my own application first.

There is a memorandum of law today in the United States vs. Carmine Tramunti (Hattie Ware) being filed.

There is a copy here for the government and also for you, Mr. Panzer.

All right. Mr. Schwartz.

MR. SCHWARTZ: Your Honor, for the record, I would like to indicate that my defendant Al Greene, is not in court. I called his home and had my office call and found that he was in the Holy Name Hospital.

I called the Holy Name Hospital and haven't obtained too much information, except that he is presently under the care of a Dr. Ladenheim, who is a neurosurgeon. My understanding is -- and this is not authoritative -- coming from the nurses and from Dr. Ladenheim's nurse, that he is presently receiving a neurological workup.

This being the case, it is very possible that he might be out of court a few days or more, your Honor.

THE COURT: Where is Holy Name Hospital?

MR. SCHWARTZ: It is over in Teaneck, New Jersey.

THE COURT: All right.

MR. SCHWARTZ: That being the case, your Honor, since it just is at the point of the trial where evidence is about to be received against my client, I think in view of what I have learned that I would have to ask for a continuance, your Honor, until such time as I can determine whether he is going to be in court and able to be confronted with the witnesses who are going to appear against him.

THE COURT: Yes, I understand.

You want to be heard?

MR. CURRAN: Yes, your Honor. Putting aside, if I may, the question as to whether the trial may continue without the defendant, the government's application at this time would be that the court designate an appropriate doctor to examine the defendant forthwith and to report back to the court as to the state of his physical condition.

THE COURT: Unfortunately, I do not have a medical directory in my head. I can't pick an appropriate doctor. I would assume, Mr. Curran, you and Mr. Schwartz can get together and get me the name of a doctor.



MR. SCHWARTZ: No problem.

MR. CURRAN: Yes, your Honor.

THE COURT: All right. Would you be good enough to do so.

Let me hear the other applications. Mr. Sunden.

MR. SUNDEN: Yes. I am in the same position tomorrow morning that Mr. Fisher was in this morning. I have an argument scheduled before the Second Circuit.

THE COURT: All right. Give me the name of the case.

MR. SUNDEN: It's United States vs. Alphonse Cirillo. I represent Theodore Lillienthal.

THE COURT: You would like to see whether I can pull two rabbits out of the hat in successive days?

MR. SUNDEN: Yes. I have confidence in your Honor.

THE COURT: I am glad you do.

Anybody else?

MR. LEIGHTON: Your Honor, in reading the transcript that was prepared by Mrs. Rosner and photostated by the government on Harry Pannirello it has come to our attention that the back side of tape 2 and all

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2 of tape 3 have not been transcribed. I understand that  
3 the transcription is in progress at this moment.

4 I would ask your Honor for a continuance of  
5 the trial until counsel can obtain the transcript of  
6 these tapes.

7 THE COURT: Am I correct, Mr. Fortuin, you  
8 are in charge of reproduction?

9 MR. FORTUIN: All we do is reproduce it.  
10 The transcription is being done by the defendants.  
11 Apparently I haven't gotten it. I have reproduced  
12 everything I have gotten with respect to Harry Panni-  
13 rello.

14 MRS. ROSNER: Your Honor, that is in progress  
15 and I am not certain when it will be completed. I  
16 was only advised of this by Mr. Leighton yesterday.  
17 Pannirello doesn't apply to my client..... I had no occasion  
18 to examine the extent of the work.

19 It is being done. I expect, your Honor,  
20 that we would have it some time tomorrow. That is the  
21 anticipated delivery date.

22 MR. SUNDEN: I would just say that as to my  
23 client I believe I am in the same posture as Mr. Leighton,  
24 and if it turned out that the tape was not fully  
25 transcribed and duplicated and handed over to us prior to



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the time of, let us say, the cross examination of Mr.  
Pannirello, I would ask for a continuance at that point,  
if that point is reached.

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2 THE COURT: I don't know who the next witness  
3 is going to be.

4 Let me ask you this: do you have any more re-  
5 redirect?

6 MR. CURRAN: Yes, your Honor, very short.  
7 I believe about three or four questions.

8 THE COURT: All right. Let's knock that off.  
9 Then I assume I will find out who the next witness is  
10 going to be -- unless you want to tell me now.

11 MR. CURRAN: The next witness, your Honor?

12 THE COURT: Yes.

13 MR. CURRAN: Agent Logan is coming after Mr.  
14 Barnaba.

15 THE COURT: All right. Why don't we get the jury  
16 back in and get the re-redirect then.

17 J O H N B A R N A B A, resumed.

18 (Jury present.)

19 THE COURT: All right, Mr. Curran. You may  
20 inquire.

21 MR. CURRAN: Thank you, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. CURRAN:

24 Q Mr. Barnaba, were you ever asked by Mr. Phillips  
25 in the grand jury about the two visits to Lo Piccolo in



1 hp2 Barnaba-redirect  
2 the year 1973 to which you testified?

3 A No.

4 Q Mr. Barnaba, did you in December, 1972, in the  
5 presence of Alfred Cassella, negotiate with either of the  
6 Lalli brothers for the purchase of a half a kilo of heroin  
7 for \$18,000?

8 MR. ROSENBERG: Objection, your Honor.

9 A Yes.

10 THE COURT: No, I will permit it.

11 Q Your answer?

12 A Yes.

13 Q Mr. Barnaba, during a break in the trial this  
14 morning did Mr. Phillips in your presence direct one of  
15 the United States Marshals to go somewhere and pick up a  
16 document?

17 MR. DOWD: Objection, your Honor.

18 A Yes.

19 Q What was that document that Mr. Phillips directed  
20 the marshal to get?

21 A A copy of my notes.

22 Q A copy of your notes?

23 A Yes.

24 Q I show you now, Mr. Barnaba, what has been marked  
25 just a couple of minutes ago Government's Exhibit 3549-B

- 1           hp3                               Barnaba-redirect
- 2           for identification. I ask you to look at it and tell us if
- 3           you recognize that document.
- 4           A       Yes.
- 5           Q       What is it?
- 6           A       It's notes I made out, that I wrote out.
- 7           Q       It's a copy of the notes you wrote out?
- 8           A       Yes.
- 9           Q       Now I show you what has been marked Government's
- 10          Exhibit 3549-A for identification and I ask you if those
- 11          are the original notes.
- 12          A       Yes.
- 13          Q       Did you at a point in late 1973 give these
- 14          original notes, 3549-A for identification, to the govern-
- 15          ment?
- 16          A       Yes, I did.
- 17          Q       And how did you come to possess 3549-B for
- 18          identification?
- 19          A       I asked for a copy of them.
- 20          Q       You asked for a copy of 3549-A for identifica-
- 21          tion?
- 22          A       Yes.
- 23          Q       And were you given a copy?
- 24          A       Yes.
- 25          Q       Is that the copy, 3549-B for identification?



1 hp4

Barnaba-redirect

2 A Yes.

3 Q And this was done on about the same day or the  
4 same day --

5 A The same day.

6 Q -- that you gave the originals?

7 A Yes.

8 Q And after you got the copy, which is 3549-B  
9 for identification, did you take that copy with you?

10 A I did.

11 Q Has that copy from the time you received it  
12 until today, until this afternoon, ever been in the posses-  
13 sion of the government?

14 A No.

15 Q It's been with you?

16 A Yes.

17 Q Or where you were staying?

18 A Yes.

19 Q Mr. Barnaba, I direct you to page 24 of 3549-B  
20 for identification, which I will refer to as your copy,  
21 and specifically, Mr. Barnaba, down about two-thirds of the  
22 way. You see where the word "May" is underlined?

23 A Yes.

24 Q Next to that what appears?

25 A "August," with my initials.

hp5 Barnaba-redirect

Q "August," with your initials?

A Yes.

Q Did you place the August and the "J.B." there?

A Yes.

Q When did you do that, approximately?

A A little while after I got the copy.

Q After you received the copy from me or from my office?

A Yes.

Q It was not on the original?

A No.

Q Is that a reference to the Russo transaction about which you have testified?

A Yes.

MR. CURRAN: Will your Honor bear with me one moment?

THE COURT: Yes.

MR. CURRAN: At this time, your Honor, the government offers in evidence 3549 for identification, the copy supplied to counsel, 3549-A for identification, the original notes, and 3549-B for identification, all government exhibits, the copy to which the witness has just testified.

MR. ELLIS: Objection, your Honor.



1 hp6

Barnaba-redirect

2 MRS. ROSNER: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. CURRAN: No further questions.

5 THE COURT: All right. Is there any --

6 MR. ROSENBERG: Can I see that, your Honor?

7 THE COURT: Sure.

8 (Pause.)

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2a                    2                    RECROSS EXAMINATION

3                    BY MR. ROSENBERG:

4                    Q                    Mr. Barnaba, you stated that on your copy,  
5                    so that I understand you, you changed the date of the  
6                    meeting at Tardi's from May to August, is that correct?

7                    A                    Yes.

8                    Q                    And you initialed it, is that correct?

9                    A                    Yes.

10                    Q                    When did you determine in your own mind that it  
11                    was a mistake?

12                    A                    Some time after I received it.

13                    Q                    Well, let's find out.

14                    First when you wrote it up, you wrote it up  
15                    some time in November, 1973, is that correct?

16                    A                    Yes, sir.

17                    Q                    And when did they give you a copy?

18                    A                    The beginning -- the end of December or the  
19                    beginning of January.

20                    Q                    After you made this correction, whose attention  
21                    did you call it to?

22                    A                    I don't recall if I called it to anybody's.  
23                    I think Mr. Curran.

24                    Q                    But you are not certain?

25                    A                    I'm fairly certain, yes.



1 tp2

Barnaba-recross

2 Q When did you call it to his attention?

3 A A couple of weeks or maybe three weeks later.  
4 I'm not sure.

5 Q Three weeks later.

6 So as I understand it, your copy was given to  
7 you some time in December or January, is that right?

8 A The beginning of January, yes.

9 Q And then when you perused it, you determined  
10 in your own mind it was a mistake?

11 A Yes.

12 Q You then crossed it out and you said August and  
13 you initialed it, is that right?

14 A Yes.

15 Q Who told you to initial it?

16 A No one.

17 Q This was your own thinking?

18 A Yes.

19 Q That you initialed it?

20 A Yes.

21 Q And then you called Mr. Curran and you recognized  
22 that you made a very serious mistake in months, is that  
23 right?

24 A Yes.

25 Q And when exactly, can you recall, that you spoke

1 tp3 Barnaba-recross

2 to Mr. Curran about that?

3 A Well, it was one of the times that I came in to  
4 see him, as I say, two or three weeks later.

5 Q So that would be some time in February?

6 A January of February.

7 Q January or February, is that right?

8 A Yeah.

9 Q Did you tell him that you initialed it at that  
10 time and you had changed the date?

11 A I don't think I told him I initialed it, no.

12 Q You just told him you changed the date?

13 A Yeah.

14 Q Was there any discussion with respect to your  
15 transcript, your notes having already been given out to  
16 the attorneys after you told him that you changed the  
17 date? Did he say anything like that?

18 A Not that I recall.

19 Q Do you know whether or not this transcript was  
20 given to the attorneys before you changed the date or after  
21 you changed the date?

22 A I don't know.

23 Q You don't know?

24 A No.

25 MR. ROSENBERG: Can we have a representation from



1 tp

2 the government as to when they handed us these papers, if  
3 your Honor please, the exact date?

4 THE COURT: Which papers?

5 MR. ROSENBERG: Barnaba's handwritten notes.

6 THE COURT: You mean 3549 for identification?

7 MR. ROSENBERG: Yes. Can we have a representa-  
8 tion from the government as to the date we received it,  
9 unless anybody knows?

10 Do you know?

11 MR. CURRAN: Your Honor, I assume Mr. Rosenberg  
12 knows when he received it.

13 MR. ROSENBERG: My recollection, your Honor,  
14 isn't as good as his. My memory is bad, that's why I'm  
15 trying to get it out, your Honor. I don't remember the  
16 date I got it.

17 MR. LOPEZ: February 8th.

18 MR. ROSENBERG: February 8th or 7th?

19 MR. CURRAN: Just a minute, your Honor.  
20 February 8th was last Friday and this document was made  
21 available to defense counsel, since I am asked for a  
22 representation, at least two weeks ago today.

23 MR. ROSENBERG: So can we have an approximate  
24 date when we received this, Mr. Curran?

25 THE COURT: At least two weeks ago today.

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You can figure it out from that.

Q With respect to the last two weeks, sir, when did you indicate to Mr. Curran that there was a mistake with respect to the date?

A I told you, two or three weeks after I received my copy.

Q Well, you received your copy, you said, some time in January, is that right?

A End of December or beginning of January.

Q Well, how do you place it either at the end of December or the beginning of January?

A Well, it was before the holidays.

Q Before the holidays?

A To the best of my recollection.

Q That is your recollection, is that correct?

A Yeah.

Q And about two or three weeks later, after you perused it, you recognized there was a mistake?

A Yes.

Q And you called it to Mr. Curran's attention, is that right?

A Yes.

Q And you crossed it out and you initialed it, is that right?



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## Barnaba-recross

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Barnaba-recross

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2 THE COURT: Middle to late January.

3 MR. ROSENBERG: The holidays.

4 THE COURT: I would assume he was not present when  
5 Mr. Curran or his assistants turned this over to you, so  
6 he can't tell you when that happened.

7 We have a representation made that they were  
8 turned over two and a half weeks ago, right?

9 MR. ROSENBERG: Right.

10 MR. DOWD: Two weeks ago.

11 MR. LOPEZ: It wasn't two weeks ago.

12 MR. DOWD: Your Honor, it was last Thursday  
13 night.

14 THE COURT: All right. Please sit down. Mr.  
15 Dowd, if you want to testify you can testify eventually.

16 All right. What more do you want? What more  
17 do you want from this witness?

18 MR. ROSENBERG: I just want to pin it down so  
19 there is no mistake that Mr. Curran was told about it  
20 prior to the time he issued it to us. That's all I want  
21 to get from this witness, your Honor.

22 THE COURT: He can't tell you that.

23 MR. ROSENBERG: Well, let's find out.

24 A I can't.

25 Q Thank you. Just a moment.



As I understand your testimony, sir, it was the last week in December that you received your photostatic copy of your own notes?

A Or the first week in January.

Q Correct. And it was some time then in the middle of January, if I understand you correctly, when you say it was the last week in December, the first week in January, about two weeks later --

A About three weeks later. About the end of January. I said two or three weeks later.

Q Two or three weeks later from the end of December to the early part of January, is that correct? Is that right?

A Yes.

Q So that would place it at the middle of January, January 15th, or the latest January 20th, am I correct, sir?

A I would say so.

Q Is that right?

And it is your sworn testimony that you told Mr. Curran that some time between January 15th and January 20th that there was an error with respect to the date, that you initialed it, that you changed it from May to August?

A I didn't tell him I initialed it, I just told him it was August, the date was August.

Q The date was August? You told it to him?

A That the month was August.

Q You told it to him between January 15th and January 20th? That's when you told it to him, is that correct?

A Yes.

Q There is no doubt about that?

A No.

Q Okay. Thank you.

THE COURT: Anybody else?

MR. ELLIS: Your Honor, may we examine 3549B and compare it with the originals to determine whether there are any other changes before we make a decision on further cross?

THE COURT: Go ahead.

MR. ELLIS: Thank you.

MR. CURRAN: Defense counsel has all three government exhibits, your Honor.

MR. ELLIS: I have not, your Honor.

THE COURT: Somebody over there does.

(Pause.)

MRS. ROSNER: Your Honor, might we approach the bench while counsel is examining that?

MR. DOWD: Your Honor, can we approach the



bench with the court reporter?

THE COURT: All right.

(At the side bar.)

MR. LOPEZ: Your Honor, my application is this: My recollection, subject to the trial minutes and your Honor's recollection, that Barnaba started testifying in this case on February 7th, which was a Thursday. We received minutes on Barnaba --

MR. CURRAN: Minutes?

MR. LOPEZ: I beg your pardon, the 3500 material on Barnaba -- on Tuesday, February 5th, at least two days before.

I would like the jury to be told exactly when defense counsel received this 3500 material. I think that is fair since it is an issue of fact.

It wasn't two weeks ago. My recollection is February 5th, and here are other counsel and I don't know what their recollection is.

THE COURT: Do you want me to add to it the fact that the government is under no obligation whatsoever to turn over 3500 material to the defense until after the witness testified also?

MR. LOPEZ: Fine. And at that time that they are obligated to do so, after he testifies, under

compulsion.

MR. CURRAN: Your Honor, if I may, all counsel received that material a couple of days before Mr. Barnaba testified. However, your Honor, my recollection is -- this shows you how good we all are on dates -- that Barnaba went on the stand first on a Thursday, we anticipated he would be on the stand the previous Friday or Monday, and as I recall a Thursday night, that is a week before he went on the stand, certain counsel came up to my office and picked up material. I have a list of those lawyers. I know, for example, that Mr. Rosenberg came up, I know Mr. Dowd came up. That was not the week Barnaba testified, that was the week before.

You can ask Mr. Dowd or Mr. Rosenberg.

MR. DOWD: I don't know. I am not representing the date. I know I came up.

MR. CURRAN: It was the week before Mr. Barnaba testified.

MR. LOPEZ: What week was that?

MR. CURRAN: My best recollection is that it was the Thursday night, which will be two weeks tomorrow.

They came to my office by invitation, and a lot of them didn't come, and picked up all Barnaba 3500



material. They then went to Mr. Phillips' office to pick up additional 3500 material. Most of them didn't go there, either.

MRS. ROSNER: I remember very distinctly, your Honor, because I went to Mr. Phillips' office and Ivan went to Mr. Curran's office and we picked up a copy for each other. I picked up surveillance minutes and Ivan picked up some short reports which pertained to surveillance, it was not the Barnaba 3500 material.

MR. CURRAN: Mr. Phillips has a receipt and I have a receipt for it. You were not there. Mr. Fisher received all the Barnaba 3500 material at that time.

MRS. ROSNER: Your Honor, my only request for the side-bar conference was since many references have been made by Mr. Curran to the fact that these matters were provided by the government, these materials, I would only ask your Honor if you make any statement to the jury, the jury be told, and I would suggest this format: The law requires that 3500 material be turned over by the government at the conclusion of the witness' direct examination. In this case the parties agree that the material was turned over at some point before the witness began his testimony because of the

1 gta5 Barnaba-recross

2 fulky nature of the materials, and that is it.

3 THE COURT: You can add to it. I mentioned  
4 what 3500 was and what the requirements are a long time  
5 ago. They know what is going on.

6 MRS. ROSNER: The thing that I think is a  
7 little unfair is the number of references that the  
8 government turned this over such a long time ago. I  
9 think the jury should be told they did it under  
10 compulsion.

11 MR. CURRAN: The last time I was asked for  
12 a representation by defense counse. I didn't particularly  
13 appreciate the reference before the jury. I gave my  
14 best recollection. I didn't volunteer that, Mr.  
15 Rosenberg asked for it.

16 THE COURT: Does anybody else have any ques-  
17 tions? That is all I want to find out.

18 (Pause.)

19 (In open court.)

20 RECROSS EXAMINATION CONTINUED

21 BY MR. ROSENBERG:

22 Q Mr. Barnaba, did you make any other changes?

23 A On that copy?

24 Q On your copy.

25 MR. CURRAN: Are you talking about 3549B now?



1 gta  
2 THE COURT: Yes.

3 MR. ROSENBERG: That is what we are talking  
4 about.

5 THE COURT: 3549B.

6 A The one I just had?

7 Q Did you make any other changes, other than the  
8 one we just discussed?

9 A On the copy I just had here?

10 Q Yes.

11 A Yes, I think I did, yeah.

12 Q And when did you make that change, sir?

13 A About the same time.

14 Q About the same time?

15 A Yes.

16 Q And did you call it to Mr. Curran's attention,  
17 also?

18 A Not those others, no.

19 Q Well, I don't understand. You called his at-  
20 tention to one mistake, but you didn't call his attention  
21 to another mistake?

22 A When I say call it to his attention, when I  
23 was going over the testimony I said that the month was  
24 different than the one that was there.

25 Q No, no.

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Barnaba-recross

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2 When you made a change on your own transcript,  
3 you bothered to initial it, you called it to Mr. Curran's  
4 attention --

5 A No.

6 Q Just a moment.

7 On the transaction that we previously dis-  
8 cussed I think you testified that between January 15th and  
9 January 20th you made a change, you initialed it and  
10 you called it to Mr. Curran's attention. Is that your  
11 testimony?

12 A Yes, but --

13 Q Just a moment.

14 MR. CURRAN: Your Honor, may he answer that?  
15 He said yes but --

16 MR. ROSENBERG: I got an answer.

17 MR. CURRAN: He is entitled to explain his  
18 answer, your Honor.

19 MR. ROSENBERG: He can explain it to Mr.  
20 Curran. Let me cross examine the way I want.

21 THE COURT: All right, I will permit it.

22 MR. ROSENBERG: Thank you.

23 BY MR. ROSENBERG:

24 Q Now, you called that to Mr. Curran's attention  
25 some time between January 15th and January 20th --



1 gta  
2 MR. CURRAN: Objection to form, your Honor.  
3 Called what?

4 MR. ROSENBERG: The alteration on his own  
5 transcription. That is what we are talking about, is  
6 that right?

7 THE COURT: All right.

8 MR. ROSENBERG: All right, good.

9 Q So you called that to Mr. Curran's attention  
10 between January 15th and January 20th, correct?

11 A Yes, I called the change of the month, yes.

12 Q Very good.

13 Now, you made another change on your own  
14 transcription, is that correct?

15 A Yes.

16 Q And you did it at approximately the same time,  
17 is that correct?

18 A Yes.

19 Q And did you call that to Mr. Curran's attention?

20 A Well, I changed the month on the notes, yes.

21 Q My question is did you tell Mr. Curran about  
22 it?

23 A About the change of the month, yes.

24 Q Yes. So that you told Mr. Curran about two  
25 situations where you were mistaken with respect to the

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Barnaba-recross

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2 month?

3 A Yes.

4 Q Is that your testimony now?

5 A Yes.

6 Q I believe on your own transcription you  
7 changed a date from April to July, is that correct?

8 A Yes. ---

9 Q And on your original notes --

10 MR. ROSENBERG: Withdrawn.

11 - Q Did you keep your original notes?

12 A No.

13 Q Who had them?

14 A Mr. Curran.

15 Q Mr. Curran had your original notes?

16 A Yes.

17 Q Well, when I call your attention to 3549A,  
18 these are your original notes, is that correct?

19 A Yes.



Q You had the month of April underlined over here,  
is that correct?

A Yes.

Q Is that before you gave it to Mr. Curran or  
after?

A That I underlined this?

Q No. See if you understand me.  
You changed this from May to April, correct,  
on your notes?

A Yes.

Q And you underlined it in a red pencil, April,  
is that correct?

A Yes.

Q Mr. Curran was in possession of your notes,  
correct?

A Right.

Q Was it given back to you for you to change?

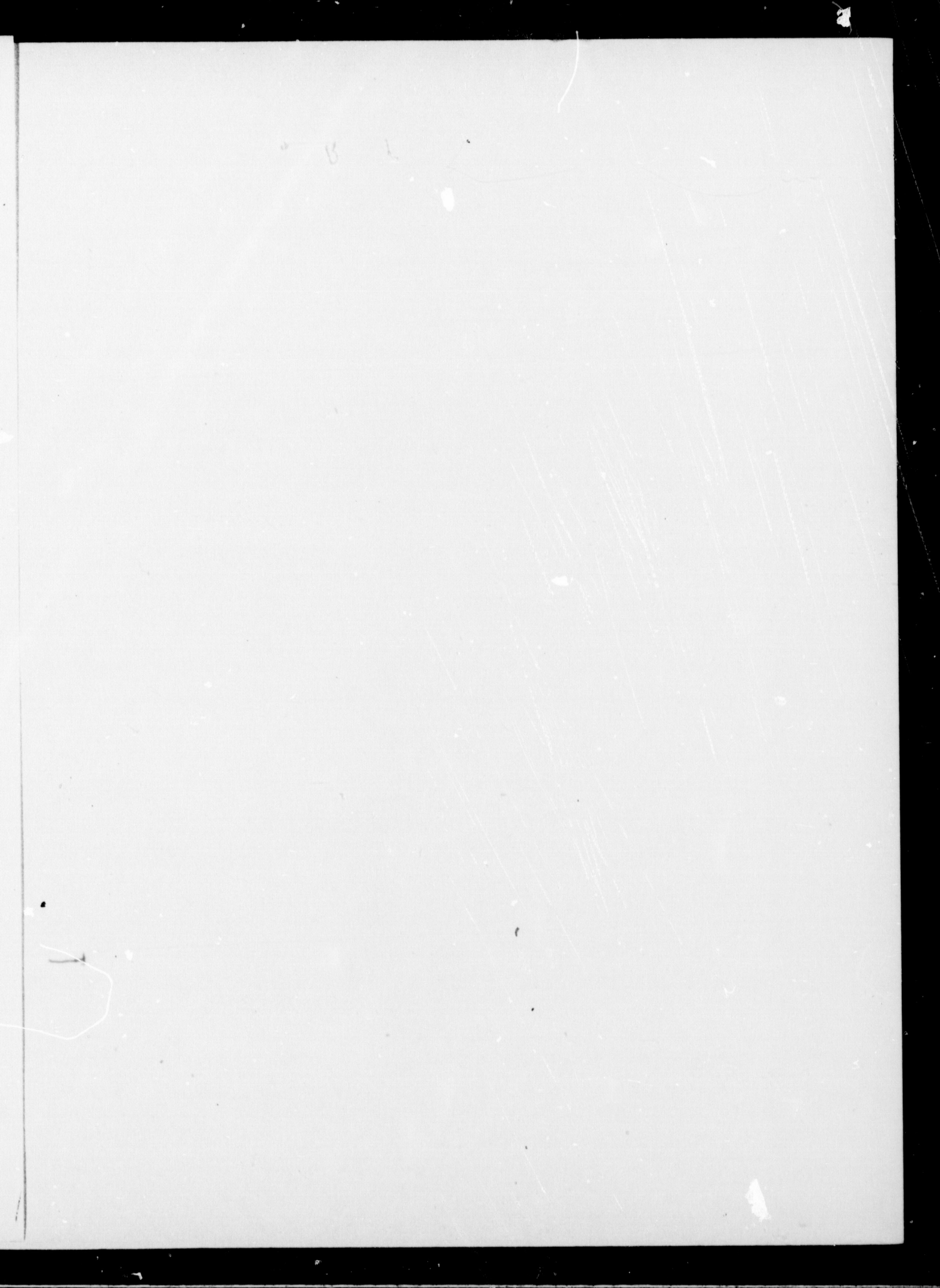
A No.

Q In other words, from the time Mr. Curran had  
your notes these changes were in effect, is that right?

A Yes.

Q When did Mr. Curran come into possession of  
your notes, did you know?

A I just testified to that.





1 jha2  
2 Q When was that?

3 A The end of December, early January.

4 Q So your testimony, as I understand it, is that  
5 there were two mistakes, after reviewing your notes,  
6 two mistakes were made, two separate months?

7 A Yes.

8 Q And you changed it on your notes and you told  
9 Mr. Curran about it, is that right, between January 15th  
10 and --

11 A I told him about the change of the month?

12 A Yes.

13 Q That is what I am talking about.

14 A Yes.

15 Q And you told it to him between January 15th and  
16 January 20th, is that correct?

17 A Yes.

18 Q Before he gave out the transcriptions to the  
19 attorneys in this case?

20 A I don't know when he gave them out.

21 Q If I tell you that it was the last week in  
22 January or the first week in February it would be your  
23 testimony that you told it to him before he gave it out,  
24 is that correct?

25 A If that's when he gave it out, yes.

Q All right. Thank you.

MR. ROSENBERG: I have no further questions.

THE COURT: Anybody else wish to inquire?

MR. CURRAN: Your Honor, might I get the exhibits? I have a question.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. CURRAN:

Q Mr. Barnaba, you have testified that you told me about a change in months some time in around the middle of January, 1973?

A Yes.

Q '74 -- I am sorry -- 1974?

A Yes.

Q Did you tell me about the changing of the dates on your copy, 3549B, when you told me or did you simply tell me about the change in months?

MR. DOWD: Objection, your Honor.

A I am talking about the change in months.

Q At any time when you told me about the change in months did you tell me that you were changing your copy?

A No.

Q That was in your possession?



A Yes.

Q Not in mine?

A No.

MR. CURRAN: No further questions.

MR. SIEGAL: May I ask a question, Judge?

THE COURT: All right, Mr. Siegal.

MR. SIEGAL: Better late than never.

RE CROSS EXAMINATION

BY MR. SIEGAL:

Q Mr. Barnaba, you were asked by Mr. Curran whether or not before the grand jury you were asked about the visits to Lo Piccolo?

A Yes.

Q And you stated that you were not asked, is that correct?

A Yes.

Q At any time before you went to the grand jury did you ever tell Mr. Curran about your visits to Lo Piccolo?

THE COURT: Hold on. Instead of restricting it to Mr. Curran, make it Mr. Curran or Mr. Phillips.

Q Did you tell Mr. Phillips or Mr. Curran or anybody else on behalf of the prosecution?

2 What is your answer?

3 A I really can't recall, Mr. Siegal.

4 Q You can't recall?

5 A Just when I said it, no.

6 Q Can't hear you.

7 A Just when I said it, no.

8 MR.SIEGAL: I can't hear.

9 THE COURT: The answer is he can't recall, he  
10 just knows it. That is the way I heard it.

11 THE WITNESS: I can't recall when it was said  
12 by me.

13 THE COURT: He can't recall when it was said  
14 by him.

15 MR. SIEGAL: No further questions.

16 MR. CURRAN: You Honor, may the witness  
17 be excused?

18 THE COURT: No. Does anybody else have  
19 any other questions?

20 Mr. Dowd.

21 MR. DOWD: I promise to be very brief, Judge.

22 THE COURT: You will.

23 RECROSS EXAMINATION

24 BY MR. DOWD:

25 Q Mr. Barnaba, I think you testified when I



1 first cross examined you that the alleged transaction  
2 involving Mr. Russo took place approximately a month  
3 after you had met Butch Pugliese in front of the Beach  
4 Rose Social Club. Is that correct?  
5

6 A I think I said July or August, yes, August  
7 or September, I believe.

8 Q Did you not tell me on cross examination  
9 in effect, in substance --

10 A That it was August, yes.

11 Q -- that the alleged transaction with Mr.  
12 Russo took place approximately a month after you had met  
13 Butch Pugliese in front of the Beach Rose Social Club?

14 A Yes.

15 Q The two dates that you changed in your photo-  
16 static copy of your notes --

17 THE COURT: Which is Government's Exhibit  
18 3594B.

19 Q -- Government's Exhibit 3549B, were the date  
20 that you met Butch Pugliese in front of the Beach Rose  
21 Social Club, the date being the month, and the month  
22 that an alleged transaction with Mr. Russo took place,  
23 is that correct?

24 A Yes.

25 Q In fact, in respect to the meeting of Butch

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Barnaba-recross

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Pugliece, on your photostatic copy you changed the date three times?

A Probably did, yes.

Q From July to May and back to July?

A Yes.

Q Did you do that last night?

A No.

Q Did you do it after I cross examined you?

A No, sir.

Q Can we believe you because you are an honorable man?

MR. CURRAN: Objection, your Honor.

THE COURT: Oh, Mr. Dowd.

MR. DOWD: No further questions, Judge.

THE COURT: Do you have any re-redirect?

MR. CURRAN: No questions, your Honor, but now in the light of the examination --

THE COURT: I have a couple of questions. This is going to be the end. If anybody wants to ask any more questions ask them now.

MR. FISHER: I just wanted to remind the court that the witness should not be excused. We are awaiting production of certain things.

THE COURT: He will be excused condition-



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MR. FISHER: Yes.

BY THE COURT:

Q Mr. Barnaba, in preparation for your examination you had conversations, I assume, with Mr. Phillips and Mr. Curran?

A Yes, sir.

Q In connection with those conversations you gave certain dates that things were supposed to have happened, is that correct?

A Yes, sir.

Q At any time during those conversations did you tell them or did they tell you that your grand jury testimony was different from what you were answering then?

A No, sir.

Q As to dates?

A Not that I recall, no.

Q Did they ever say that your handwritten notes were different dates than the answers you were giving them then?

A No, sir.

THE COURT: All right, step down.

(Witness excused.)

MR. CURRAN: Your Honor, in the light of the

additional re-recross with respect to these documents by Mr. Rosenberg and Mr. Dowd, the government would offer them again, all three documents, 3549, 3549A and 3549B for identification, into evidence.

THE COURT: I will reserve.

MR. ROSENBERG: Same objection, your Honor.

THE COURT: Yes, you have the objection, but I am reserving determination.

Call the next witness.

MR. FORTUIN: The government will call Al Logan.

MR. SCHWARTZ: Your Honor, may I approach the side bar?

THE COURT: Sure.

(At the side bar.)

MR. SCHWARTZ: I would only like to renew my application for a continuance in view of the fact that Greene isn't present and I believe that this witness starts evidence against Greene, he is an introduction to Pannirello.

THE COURT: I have no idea what he is.

MR. PHILLIPS: He is an undercover agent, your Honor, who purchased narcotics from Harry Pannirello, and Pannirello's brother-in-law and brother were also



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arrested as a result of negotiations with this particular  
agent. He does not mention Mr. Greene at all. The  
witness after him will.

THE COURT: Does he mention any of the  
defendants?

MR. PHILLIPS: No.

THE COURT: - I didn't think so.

MR. SCHWARTZ: He is the introduction to the  
witnesses that will testify, the only witnesses, as I  
understand it, against Greene, and I would think that Mr.  
Greene's presence in the courtroom is essential. Much  
as I hate to hold up the court, I am really not asking for  
a continuance --

THE COURT: I understand. I think its  
introductory evidence not that pressing. We will take  
that introductory evidence.

I am having someone check on your client's  
physical condition. When we take a break I want  
to see you and Mr. Phillips.

MR. SCHWARTZ: I am also trying to get a  
doctor that everybody can agree on.

MR. SUNDER: Judge, can I take up one  
other matter at this point?

With regard to my client, William Alonzo --

1 I wanted to bring this to Mr. Phillips' attention --  
2 since we are getting into the part of the testimony  
3 which is introductory to Harry Pannirello,  
4 and as I understand it Pannirello is going to incriminate  
5 my man, Alonzo, Alonzo, as I understand it, was incar-  
6 cerated until approximately November, 1971 and then, as  
7 a point of information, I believe located himself in the  
8 building on University Avenue.  
9

10 Now, I don't know. That incarceration I  
11 believe had nothing to do with the conspiracy per se  
12 and I believe the incarceration he was serving was on  
13 an unrelated narcotics conviction.

14 Much as with the situation of Mrs. Rosner's  
15 client earlier, I would like the court to direct Mr.  
16 Phillips to instruct any witnesses who may mention Mr.  
17 Alonzo not to bring out on direct examination the fact  
18 of Mr. Alonzo's prior incarceration on an unrelated  
19 narcotics arrest.

20 MR. PHILLIPS: Your Honor, it is not neces-  
21 sary. I have already directed the witness to that  
22 effect, because the government does not deem that  
23 Mr. Alonzo's incarceration is an integral part of its  
24 proof, the way Mr. Pugliese and Mr. Incleese's incarceration  
25 was. So I have already directed him -- in fact, I



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did it last night -- directed Mr. Pannirello not to mention  
that he had just come out of jail.

MR. SUNDEN: All right.

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(In open court.)

ALBERT C. LOGAN, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FORTUIN:

Q Mr. Logan, by whom are you employed?

A The Drug Enforcement Administration.

Q And the Drug Enforcement Administration, is that the federal agency charged with investigating violations of the federal narcotics laws?

A Yes.

Q What is your position with the Drug Enforcement Administration?

A I am a special agent.

Q Agent, generally, what are your duties?

A Investigating violators of the federal narcotic laws.

Q Do you know a person by the name of Thomas Dawson?

A Yes, I do.

Q Is he also known to you as Tennessee Dawson?

A Yes.

Q Directing your attention to January 8, 1973,



1 hp2 Logan-direct

2 were you on duty on that occasion?

3 A Yes.

4 Q And were you in the presence of Mr. Dawson?

5 A Yes, I was.

6 Q And what did you and Mr. Dawson do?

7 A We met in Washington, D. C. Then we drove to  
8 Ridgefield Park, New Jersey.

9 Q When you got to Ridgefield Park, New Jersey,  
10 where exactly did you go?

11 A We went to the Howard Johnson's Motor Inn  
12 located on U.S. 6 -- U.S. 46.

13 Q After you got to Howard Johnson's what did you  
14 do?

15 A We went into the inside of the restaurant and  
16 were seated.

17 Q After you were seated did there come a time  
18 when you were joined by some other persons?

19 A Yes.

20 Q And when did that occur?

21 A At approximately 8.55 p.m.

22 Q Were you introduced to these people?

23 A Yes, I was.

24 MR. SIEGAL: I object, if your Honor please,  
25 as not binding on Tramunti.

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Logan-direct

THE COURT: This is all being taken subject to connection. You recall what I talked about before with respect to subject to connection.

Go ahead, Mr. Fortuin.

Q Who were you introduced to?

A I was introduced by Tennessee to Harry and by Harry to Johnny.

Q Did you learn at that time or at any time Harry's full name?

A Yes, I did.

Q What was it?

A Harold Pannirello.

Q Did you learn at that time or any other time John's full name?

A Yes, I did.

Q And what was that?

A Johnny Pannirello.

Q Did you have a conversation at that time?

A Yes, we did.

Q Agent, as best you remember, what did the people present say?

A Harry asked Tennessee to assist him in collecting \$20,000 that Allen owed him.

Q Did he say what Allen owed it to him for?



1 hp4 Logan-direct

2 A Yes, he did.

3 Q What was that?

4 A Harry stated that Allen and Sallie had come to  
5 Ridgefield Park, New Jersey --

6 MR. SCHWARTZ Objection, your Honor. The name  
7 Allen is being used.

8 THE COURT: -I understand. We are just trying  
9 to get the conversation out right now.

10 All right. Go ahead.

11 Q Agent, did Harry explain to you how this person  
12 known as Allen came to owe him \$20,000?

13 A Yes, he did.

14 Q What did he say?

15 A Harry stated that Allen and Sallie had come to  
16 New Jersey during the month of November, 1972, and picked  
17 up one-quarter package which valued \$10,000. Harry went  
18 on to say Allen had returned to New Jersey during that  
19 same month with \$5000 and asked for three one-eighth  
20 packages which valued \$15,000. Harry stated that Allen  
21 had not returned and did owe him the 15,000 plus the  
22 5000, total 20,000.

23 Q Agent, at that time what did you understand  
24 by the word "packages"?

25 MR. ELLIS: Objection to his understanding,

1 hp5 Logan-direct

2 your Honor.

3 THE COURT: I don't think it's necessary. Why  
4 don't you withdraw the question.

5 MR. FORTUIN: I will withdraw the question,  
6 your Honor.

7 Q Agent, you testified that Harry referred to a  
8 person by the name of Allen. Did you learn at that time  
9 or at any time who Allen was?

10 A Yes, I did.

11 Q And who was Allen?

12 A Warren Robinson.

13 Q Do you see the person that you have just named,  
14 Warren Robinson, in the courtroom today?

15 A Yes, I do.

16 Q Could you point him out to us?

17 A He is the black male seated here with the tan  
18 shirt.

19 MR. LEIGHTON: Indicating the defendant, your  
20 Honor.

21 THE COURT: All right.

22 MR. FORTUIN: May the record reflect that the  
23 witness has identified the defendant Warren C. Robinson.

24 THE COURT: Yes.

25 Q After the conversation you have just told us



1 hp6 Logan-direct

2 about with Harry, what if anything did Tennessee say?

3 A Tennessee agreed to assist Harry in collecting  
4 the \$20,000.

5 Q Did you have any further discussions with  
6 Tennessee or with Harry at that time?

7 A Yes, we did. Harry asked Tennessee did he  
8 want to do anything. Tennessee said, "No, that is why Al  
9 is here."

10 At that point Harry asked me did I want -- how  
11 much did I want to start with. Before I could answer  
12 Harry offered one-half package.

13 I told Harry I only wanted one-quarter package  
14 as a starter.

15 Q Did you discuss with Harry the terms upon which  
16 you would receive the package?

17 A Yes. Harry stated that I would receive the  
18 one-quarter package on consignment for \$9500. Harry  
19 went on to instruct me to return to Ridgely Park, New  
20 Jersey, on January 10 to pick up the one-quarter package  
21 from an individual who he named as Jimmie. Harry said  
22 Jimmie would be driving an old beat-up stationwagon.

23 Q Did Harry tell you where you would meet  
24 Jimmie at that time?

25 A Yes, he did. He said at the Landmark Hotel,

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Logan-direct

which is about one or two blocks from the Howard Johnson's.

Q Did you make any arrangements at that time with respect to how you would contact Harry or how Harry would contact you?

A Yes. I gave Harry my home telephone number.

Q And did he give you any instructions or did you have a conversation?

A Yes. He said he would call me on January 11 at 7.00 p.m. Harry said when talking by phone refer to one package as one dozen shirts, one-half package as six shirts, and so forth.

Q After this conversation, Agent, what happened?

A Harry and Johnny left the restaurant, Tennessee and I also left the restaurant.

Q What was the next time you saw Harry?

A On January 10.

Q And where was that?

A At the Landmark Hotel in New Jersey.

Q Can you tell us what happened on that occasion?

A Yes. Special Agent Clinton Perry and I drove to the Landmark Hotel and saw Harry and another individual seated in a car. We parked. I got out and met with Harry and that other individual. Harry introduced that person to me as Jimmy.



1 hp8 Logan-direct

2 Harry then asked me had I contacted Allen about  
3 the \$20,000. I told him no, but I heard that Allen was  
4 attempting to collect the money.

2 5 Q Did you learn at that time or at any time  
6 what Jimmy's full name was?

7 Do you remember it if you did learn it?

8 A Yes, but-I don't recall at this time.

9 Q At that time did Harry give you any instructions  
10 about how you would receive the package that you described?

11 A Yes. Harry told me to go to the rear of the  
12 motel when picking up additional packages because it was  
13 safer and darker. Harry also told me to go to the rear  
14 to receive the 1/4 package on that day, that evening.

15 Before I could say anything or move Jimmy said  
16 that he could do it there.

17 Q What did Jimmy do after that, if anything?

18 A Jimmy then walked to a white '54 Ford station-  
19 wagon.

20 Q Can you describe that stationwagon to us briefly?

21 A Yes. It had what appeared to be paint buckets  
22 and construction tools along with a ladder on top of it.

23 Q And what did Jimmy do after he approached the  
24 car?

25 A Jimmy went into the front seat and appeared to

1 hp9

Logan-direct

2 take a package from a tool box in the rear seat and put  
3 it into his pocket. Jimmy left the car, returned to where  
4 Harry and I were standing, and handed me a tin -- I'm  
5 sorry -- a plastic bag containing white powder.

6 MR. FORTUIN: Your Honor, for the record,  
7 I have in my hand two envelopes that have previously been  
8 marked Government's Exhibit 63-A and 63-B. They are  
9 stapled together and I am now separating them.

10 May the record reflect that Exhibit 63-A is  
11 a lockseal envelope, that it is empty, and that the bottom  
12 has been slit.

13 May the record further reflect that Government's  
14 Exhibit 63-B is a lockseal envelope and the seals are  
15 intact.

16 Does any counsel wish to examine the envelope?

17 MR. FISHER: Yes.

18 (Pause.)

19 MR. FORTUIN: Your Honor, at this time I am  
20 going to open Government's Exhibit 63-B.

21 Your Honor, may the contents of Government's  
22 Exhibit 63-B be marked or deemed marked Government's  
23 Exhibit 63-C.

24 THE COURT: Yes.

25 (Government's Exhibit 63-C marked for  
identification.)



Q Agent, will you examine Government's Exhibit 63-C  
and tell me whether or not you can identify it?

A Yes, I can.

Q And what is it, and how can you identify it?

A My initials appear on the wrapper.

Q And what is Government's Exhibit 63-C?

A This is the package which I received from Jimmy  
on January 10, 1973.

Q And after you received that exhibit, what did you  
do with it?

A I locked it in Government's Exhibit 63-A.

Q How can you identify Government's Exhibit 63-A?

A My initials also appear on the exhibit.

Q Agent, briefly, have you had occasion to use  
these lockseal envelopes in the past?

A Yes.

Q And can you just tell us how they work?

A Yes. Once the locks are intact, the envelope  
cannot be opened without destroying the envelope.

Q After you received the package which has been  
marked as Government's Exhibit 63-C, what happened on  
January 10th?

A Harry told me that he would call me on the  
following day, January 11th. Harry and Jimmy then left

1 tp2 Logan-direct

2 the area. I joined Agent Perry and left the area, also.

3 Q Directing your attention to the following day,  
4 which would be January 11, 1973, did Harry contact you?

5 A Yes, he did.

6 Q What did he say or what did you say, or how  
7 did he contact you?

8 A Harry called me at my home by phone.

9 Q And what was said?

10 A Harry and I agreed that I would deliver \$9500  
11 in cash as payment for the package received on January the  
12 10th on January the 15th at the Landmark Motel.

13 Q That's the Landmark Motel you just told us  
14 about?

15 A Yes.

16 Q Thereafter did you receive another call from  
17 Harry?

18 A Yes, I did, on January the 14th. Arrangements  
19 were made between Harry and myself to deliver the \$9500  
20 to Harry at the same Landmark Motel.

21 Q And on what date were you to deliver the money?

22 A On January the 15th.

23 MR. KING: May we have the year?

24 Q What year was that?

25 THE COURT: All right, go ahead.



1 tp3 Logan-direct

2 Q What year would that be, Agent?

3 A 1973.

4 Q And did you proceed to the Landmark Motel on  
5 January 15, 1973?

6 A Yes, I did. Agent Charles Howard and I drove  
7 to the Landmark Motel on January 15, 1973. We saw Harry  
8 seated in an automobile. We parked our car, got out, and  
9 met with Harry in the parking lot. I introduced Agent  
10 Howard to Harry as Charles.

11 Harry, Agent Howard and I then went into the  
12 restaurant, where we have a conversation.

13 Q What conversation did you have in the restaurant?

14 A I asked Harry did he have the quarter package  
15 which I expected to receive on that date. Harry said  
16 no, he had trouble contacting his man, but he felt that  
17 he could contact his man the following day and asked me  
18 to wait until the next day.

19 Harry went to to say if I waited he would give  
20 me three 1/8 package instead of the 1/4 package the following  
21 day.

22 Q What did you say to that?

23 A I told Harry that I wanted to get 1/2 package  
24 the following day if I would wait. Harry told me that  
25 he could not give me the 1/2 package without front money.

1 tp4 Logan-direct

2 Q Did he say how much front money?

3 A Yes. Harry explained that the three 1/8 packages  
4 cost \$14,250.

5 Harry said once I received those packages he  
6 would give me a half a package if I would deliver \$21,000  
7 to him, \$14,250 being payment for the three 1/8 package  
8 and the rest being front money for the half-package.

9 Q After the conversation you just described inside  
10 the restaurant, what did you do?

11 A Agent Howard, Harry and I left the restaurant.  
12 Harry asked us to meet him at the rear and deliver the  
13 \$9500 to him.

14 Agent Howard and I drove in our vehicle, as  
15 Harry drove in his vehicle to the rear. We parked.  
16 Harry got out of his car and walked to our car. I passed  
17 Agent Howard a brown paper bag containing \$9500, which he  
18 passed to Harry.

19 Q And after the transfer you just described,  
20 what did you do?

21 A Harry left the area, Agent Howard and I also  
22 left.

23 Q Directing your attention now to the following  
24 day, which would be January 16, 1973, did you again see  
25 Harry or Jimmy?



1 tp5 Logan-direct

2 A Yes. Agent Howard and I went again to the  
3 Landmark Motel and met with Jimmy.

4 Jimmy told me that he had just gotten off the  
5 phone with Harry and Harry wanted me to wait another day  
6 before picking up the package.

7 I told Jimmy I could not wait and asked Jimmy  
8 to call Harry.

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Q And did Jimmy call Harry?

A Yes, he did.

Harry told me he was sorry about not being able to deliver the goods.

Q I take it Jimmy called him and handed you the phone; is that what happened?

A Yes, he did.

Q And then you had this conversation?

A Yes.

Q And what was said?

A Harry told me he was sorry about not being able to deliver the goods on that date and asked me to wait until the following day.

I told Harry that I could not wait and asked Harry to call me once the goods were ready.

Harry said that he would call the following day, January 17, 1973.

Q Did Harry call you on January 17th?

A Yes, he did.

Q And what was said at that time?

A Harry told me that the goods were ready and Harry and I agreed that I would meet himmy at the Landmark Motel and pick up the three 1/8th packages on January the 19th, 1973.



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Q Directing your attention to January 19, 1973, did you again go to the Landmark Motel?

A Yes, I did.

Agent Howard and I drove to the Landmark Motel and saw Jimmy parked in his white stationwagon. We stopped momentarily and drove to the rear, followed by Jimmy.

I got into Jimmy's car. Jimmy handed me a piece of paper containing the price for the package that I was going to receive on that day and a partial payment toward the one-half package which I would receive later.

Jimmy then said that Harry sent that to me.

Jimmy took a brown paper bag containing four plastic bags from the edge of the front seat and handed it to me. Jimmy said that Harry would call me on January the 22nd, 1973.

MR. FORTUIN: Your Honor, for the record, I again have two lock-seal envelopes in my hand which have been marked 64A and 64B. They are stapled together, and I am separating them.

May the record reflect that Government's Exhibit 64A is a lock-seal envelope, that the lock seals are intact, but that the envelope has been slit open and is empty.

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2 Government's Exhibit 64B is another lock-  
3 seal envelope. The lock seals on it are intact, and  
4 at this time I am going to open it.

5 Does anyone wish to examine the envelope  
6 before I open it?

7 Your Honor, may the contents of Government's  
8 Exhibit 64B be marked Government's Exhibit 64C.

9 (Government's Exhibit 64C was marked for  
10 identification.)

x 11 Q Agent, I place in front of you three government's  
12 exhibits, Government's Exhibits 64A, B and C.

13 Would you look at Exhibit C and tell us  
14 whether or not you can identify those packages?

15 There is also some brown paper there. Would  
16 you also examine that and tell us if you can identify  
17 that?

18 A Yes, I can.

19 Q How can you identify those articles?

20 A My initials appear on the brown paper bag.

21 Q And what is that brown paper bag?

22 A That is the brown paper bag which Jimmy  
23 gave me the four plastic bags on January the 19th, 1973.

24 Q And those are the four plastic bags in front  
25 of you? Are those bags in front of you similar in



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2 appearance to the bags that you received on that  
3 occasion?

4 A Yes, they are.

5 Q And after you received those bags what did you  
6 do with them?

7 A I locked them in a lock-seal envelope.

8 Q Would you examine Government's Exhibit 64A and  
9 tell us whether or not you can identify that.

10 A Yes, I can.

11 Q And how can you identify it?

12 A My initials appear on Government's Exhibit 64A.

13 Q And what is that?

14 A That is an evidence envelope which I locked  
15 Government's Exhibit 64C into on January 19, 1973.

16 Q On January 19, 1973, after you received the  
17 packages which have been marked Government's Exhibit 64C,  
18 what else happened?

19 A Jimmy told me that Harry would call on January  
20 22, 1973.

21 I left Jimmy's car, Jimmy left the area, so did  
22 Agent Howard and myself.

23 Q Did Harry call you on the 22nd of January?

24 THE COURT: Hold on for just a second. I  
25 think it is time now to take a break. We are at a point

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2 where one transaction is finished.

3 Mr. Marshal, would you be good enough to take  
4 the jury from the room.

5 (The jury left the courtroom.)

6 THE COURT: All right, gentlemen, we will  
7 take ten minutes.

8 (Recess.)



(In open court; jury not present.)

THE COURT: Before the jury is brought back, I think a couple of things should be put on the record.

One, at noontime today I directed that Mr. Inglese supply handwriting exemplars on small cards, which I believe has already been done. Is that correct, Mrs. Rosner.

MRS. ROSNER: That is correct. I would like the record to also reflect that we had made a motion for the results, if any, of the handwriting analysis to that point and to be permitted to inspect the exemplar to which Mr. Inglese's exemplars are being compared.

THE COURT: The questioned document?

MRS. ROSNER: Yes, sir.

THE COURT: At the same time I think we also should note that Mr. Schwartz has objected to anyone cross examining the present witness at least until such time as we get a complete report on Mr. Al Greene's condition, as to what is going on there.

Let me ask you this: Does anyone here intend to cross examine the present witness other than Mr. Schwartz?

MR. LOPEZ: I do, your Honor.

MR. SUNDEN: I do.

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MR. LEIGHTON: I DO.

MR. PANZER: I do.

THE COURT: Mr. Lopez, Mr. Sunden, Mr. Leighton,  
Mr. Panzer, Mr. Pollack.

By the way, I hope there is absolutely no  
objection by anyone the way we are handling this cross  
examination thing, rather than asking each counsel if he  
wants to inquire and so on.

MR. LOPEZ: No objection, your Honor.

THE COURT: All right. I think most  
likely we will have the first counsel cross examine today.  
That would be you, Mr. Lopez.

MR. LOPEZ: Fine, your Honor.

THE COURT: All right. Bring back the wit-  
ness and the jury, please.

Should I expect to have applications this  
afternoon?

How delightful. All right.

By the way, Mr. Ellis, I got that. Mr.  
Curran was good enough to let me have that thing. I am  
going to think about it. You will have an answer to-  
morrow morning.

MR. ELLIS: Will that be on both applica-  
tions, your Honor?



THE COURT: Yes.

MR. ELLIS: Thank you.

MR. PANZER: Judge, could I approach the bench for a minute, not on the record?

THE COURT: Sure.

(At the side bar, discussion off the record.)

(In open court.)

THE COURT: All right, Mr. Fortuin.

BY MR. FORTUIN:

Q Agent, I believe prior to the recess you told us that on January 19th, when you purchased Government's Exhibit 64C for identification, Jimmy told you that Harry would contact you on the 22nd, is that correct?

A Yes, that is correct.

Q Did Harry call you on the 22nd?

A Yes, he did.

Q What did he say on that occasion?

A Harry and I agreed that I would meet Jimmy on February 2, 1973 at the Howard Johnson's Motor Inn on U.S. 46 in Ridgefield Park, New Jersey and pick up one package -- one half package and give Jimmy \$21,000 in cash. Harry and I further agreed that Harry would call me on January 31, 1973.

THE COURT: I am sorry, but I missed a little

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bit of that answer. Would you read it back, please,  
Mr. Reporter.

(Answer read.)

THE COURT: All right. That was my  
problem.

Agent, was it one half package or one package?

THE WITNESS: It was one half package.

THE COURT: All right. Go ahead, Mr.  
Fortuin.

BY MR. FORTUIN:

Q Did Harry call you on the 31st?

A No, he did not.

Q When was the next time you had a conversation  
with Harry?

A On February 1, 1973.

Q Did he call you over the phone?

A Yes. Harry called my home and left a  
number for me to call him.

Q Did you call him back?

A Yes, I did.

Q What conversation did you have at that time?

A At that time Harry and I agreed that I would  
meet Jimmy on February 2, 1973 at the Howard Johnson's  
and give Jimmy the \$21,000 in cash and receive one half



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package.

Q These were just further arrangements?

A Yes.

Q Did you go to the Howard Johnson's?

A Yes.

Q And was that on February 2, 1973?

A. Yes. On February 2nd Special Agents Howard,

Perry and I went to the Howard Johnson's. We saw

Jimmy in a Chevrolet. We parked and went to Jimmy's car.

Jimmy said, "Do you have your package? I have mine," and attempted to take something from the edge of the driver's seat.

I then asked Jimmy to come into the restaurant. The four of us went into the Howard Johnson's restaurant.

I left the restaurant, followed shortly afterward by Jimmy and Agent Howard. Jimmy got into his car, Agent Howard went back into the restaurant. Shortly afterward Jimmy was arrested.

Q Agent, if you know, what happened to Harry Pannirello?

A Yes, I do.

Q What happened?

A On February 3rd, in the a.m. hours, Harry

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2 Pannirello was also arrested.

3 Q How about John Pannirello?

4 A Yes, I understand John Pannirello was also  
5 arrested.

6 MR. FORTUIN: I have no further ques-  
7 tions.

8 CROSS EXAMINATION

9 BY MR. LOPEZ:

10 Q Agent Logan, my name is Frank Lopez. I am  
11 one of the defense attorneys for one of the defendants on  
12 trial here. I would like perhaps that you help me  
13 with a couple of matters.

14 Q Agent, when you originally went up to  
15 New Jersey with Tennessee Dawson did he actually know  
16 that you were a special agent of the Federal Drug  
17 Administration?

18 A Yes, he did.

19 Q In other words, he was now a cooperating  
20 individual, an informer, whatever you want to  
21 call it, isn't that correct?

22 A That is correct.

23 Q Apparently he had earlier agreed to cooperate  
24 with you and to bring you in on a drug purchase,  
25 is that correct?



2 A Yes.

3 Q As a result of his efforts in cooperating with  
4 you he brought you to Harry Pannirello, isn't that  
5 correct, he took you to Harry Pannirello?

6 A Yes, that is correct.

7 Q Do you see Harry Pannirello in this courtroom  
8 today?

9 A No, I do not.

10 Q Do you see John Pannirello in this courtroom  
11 today?

12 A Yes, I do.

13 Q You see John Pannirello in this courtroom  
14 today?

15 A Yes, I do.

16 Q Would you point him out for me?

17 A The individual seated here appears to be John  
18 Pannirello to me.

19 Q Which individual?

20 That person?

21 A Yes.

22 MR. LOPEZ: Would the individual who stood  
23 up please identify himself for the record.

24 DEFENDANT CHRISTIANO: Donato Christiano, also  
25 known as Finnegan.

2 THE COURT: All right. Sit down.

3 Q You mentioned a person by the name of Jimmy.

4 Does the name Jimmy Provitero mean anything to you?

5 A Yes, it does.

6 Q Is that the Jimmy that you have been talking  
7 about in your direct testimony?

8 A Yes, it is.

9 Q Do you see Jimmy Provitero in the courtroom  
10 today?

11 A No, I do not.

12 Q I just want to make something very clear.

13 The exhibits that are before you on the table, 64C and  
14 64B, some of those packages contain heroin, do they not?

15 A Yes.

16 Q Those packages were received from Jimmy Provi-  
17 tero, is that correct?

18 A That is correct, yes.

19 Q And that was as a result of your conversations  
20 with Harry Pannirello and John Pannirello, is that correct?

21 A Yes, it is, yes.

22 Q On February 2nd you have told us that Jimmy  
23 Provitero was arrested, is that correct?

24 A That is correct, yes.

25 Q Was he charged in the United States District  
Court for the District of New Jersey some time later



on violation of the federal narcotics laws?

A I don't know. I can't answer that.

Q You participated in the arrest of Jimmy Provitero, is that correct?

You participated in the arrest of Jimmy Provitero?

A Yes, indirectly, yes.

Q Were you there when he was brought into federal headquarters or into any Federal Drug Administration offices?

A No, I was not.

Q So you don't know if Jimmy Provitero actually cooperated with the government at any subsequent time, do you?

A No, I do not.

Q Since the end of January have you seen Harry Pannirello?

Since the end of January, 1973 have you seen Harry Pannirello?

A Yes, I have.

Q When was that?

A I believe it was in January, 1974.

Q And where was that, sir?

A Here in the United States Courthouse.

Q Did you participate in any interview of Harry

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2 Pannirello?

3 A No, I did not.

4 Q Were you present when he was questioned by  
5 anyone?

6 A No.

7 Q Was your visit coincidental?

8 A I did not know I was going to see him, if  
9 that's what you mean. No, I didn't know.

10 Q Was your visit here for the purpose of iden-  
11 tifying him?

12 A No.

13 Q All right. What was it for?

14 A A conference with the United States Attorney's  
15 Office.

16 Q Did Harry Pannirello participate in that  
17 conference at the United States Attorney's Office.

18 Q While I was present, no.

19 Q Did you speak separately with the United  
20 States attorney?

21 A Yes, I did.

22 Q And Harry Pannirello was not present?

23 A No, he was not.

24 Q Was Jimmy Provitero present?

25 A No.



Q Was John Pannirello present?

A No, he was not.

Q So that you discussed this case with the United States attorney of this district and you just happened to run into Harry Pannirello, is that correct?

A To the best of my knowledge, yes.

Q Thank you very much, sir.

MR. LOPEZ: No further questions.

THE COURT: All right. Mr. Sunden.

CROSS EXAMINATION

BY MR. SUNDEN:

Q Agent Logan, my name is Gary Sunden and I represent Mr. William Alonzo.

Sir, did you see Harry Pannirello in New Jersey on January 15, 1973, at the Landmark Motel?

A Yes, I did.

Q Did you yourself make any notes or memoranda detailing what happened at that meeting?

A Yes, I did.

Q Do you have those notes and memoranda with you?

A No, I do not have them with me, no.

MR. SUNDEN: I wonder if I could ask --

MR. FORTUIN: They have been turned over

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previously.

THE COURT: Do you have the 3500 material which has been marked, Mr. Fortuin?

MR. FORTUIN: Yes.

THE COURT: Has it been marked.

MR. FORTUIN: Yes, it has.

THE COURT: All right. Can we have an identification by numbers as to what has been marked?

MR. FORTUIN: Yes. With respect to this witness, your Honor, we have marked Government's Exhibits 3552 through 3562. They have been turned over to defense counsel.

THE COURT: All right.

MR. SUNDEN: I see that Government's 3556, which I have just been handed, is the report of Agent Howard. Officer Logan I believe stated that he himself made a report. That is what I am asking for.

THE COURT: You want to show him that document and find out if that is what he is referring to?

BY MR. SUNDEN:

Q Agent Logan, I show you this Government's Exhibit 3556. Is that the notes and memoranda that you made pertaining to that meeting of January 15, 1973?

A No. This is a report by Agent Charles Nov-



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ard.

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THE COURT: And you have separate notes and

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memoranda?

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THE WITNESS: No. I made handwritten

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notes, which I don't have at this time.

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MR. SUNDEN: I am going to ask that they

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be turned over.

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THE COURT: Let's find out. Are they still

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in existence, those handwritten notes?

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THE WITNESS: No, sir, they are not.

12

Q Did you in any way transcribe those handwritten

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notes into some typed document or other document?

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-- A -- Everything that was in those notes are

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in Special Agent Howard's report.

16

THE COURT: Did you give those notes to

17

Special Agent Howard?

18

THE WITNESS: Yes, sir, I did.

19

Q Agent Logan, I direct your attention to January

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3, 1973. I believe you testified that you saw Harry

21

Pannirello in New Jersey on that date, is that correct?

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A That is correct, yes.

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Q You had a conversation with him, is that cor-

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rect?

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A That is correct.

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Q During the course of that conversation I believe you stated that Mr. Harry Pannirello indicated that he wanted to get in touch with a party by the name of Robinson to collect some money, is that correct?

A Mr. Pannirello used the name Allen.

Q But you understood that Allen to be a party by the name of Robinson, is that correct?

A That is correct, yes.

Q And he indicated that he wanted to get in touch with this Allen to collect some money, is that right?

A That is correct.

Q Incidentally, where did that conversation take place?

A In the restaurant of a Howard Johnson's Motor Inn.

Q Where were you sitting in the restaurant?

A We were at a booth.

Q Did there come a time when Mr. Pannirello stated that unless the money could be collected from Allen Mr. Pannirello was going to do something?

A Mr. Harry Pannirello or Mr. Johnny Pannirello?

Q Mr. Harry Pannirello.

A Yes, sir, that is correct.



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Q Did you understand by the words "do something" that Harry Pannirello was talking about using some violence to collect that money?

A Yes, that is what I understood it to mean.

Q Do you recall the exact words that he used?

A No, I don't.

Q But you did clearly understand that Harry Pannirello was threatening some violence by stating that he was going to do something about it, is that correct?

A That is correct, yes.

Q During the course of your meeting with Mr. Pannirello on January 15, 1973 did you recall a conversation with Mr. Pannirello wherein he stated approximately how much money he himself might make in the course of a year of narcotics transactions?

A Did you say January 15th?

Q Yes.

A Yes, sir, he did.

Q Can you tell me how much money did Mr. Pannirello state that he might make in the course of a year of narcotics transactions?

A He stated \$500,000.

Q Did he further state as to whether there

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was any amount of money that he might put away for him-

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self in case of any emergency or something to that

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effect?

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A Yes, he did.

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Q What was that?

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A He stated \$300,000

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Q In all of your conversations with Mr. Pannirello prior to the time that he was actually arrested, how many minutes or hours, in your best judgment, would you say that you had occasion to talk with Harry Pannirello? Would it be several hours' time in all these different meetings?

A To the best I recall, approximately two to four hours.

Q I see. And during the course of this two to four hours conversation with Mr. Pannirello, Harry Pannirello, that is, did he ever make reference to the fact that he at any time may have used LSD himself?

A Not that I recall.

Q May he have stated that?

MR. FORTUIN: Objection.

THE COURT: Yes, I will sustain that.

He said he didn't recall. Possibly he could have said anything.

Q But the packages of heroin which are seated on the table right in front of you, you are sure that they came from either the hands of Harry Pannirello or from the other people's hands but at the direction of Harry Pannirello, is that correct?

A Am I sure?

Q Well, you did receive a package from Mr. Pannirello himself, is that correct?

A No, I did not.

Q But the packages that you did receive you received after instructions had been given or arrangements had been made by Harry Pannirello, is that correct?

A That is correct, yes.

Q Thank you.

MR. SUNDEN: I have no further questions.

THE COURT: All right. Ladies and gentlemen, I am going to request the marshal to take you out at this point.

Remember, please, don't discuss the case and don't form any opinion yet.

Marshal, would you please.

(The jury left the courtroom.)

THE COURT: All right, Agent, you can step down.

(Witness temporarily excused.)

MR. FORTUIN: Will you direct the witness to return tomorrow?

THE COURT: He knows.

You know that you have to come back and be cross-examined?

THE WITNESS: Yes, sir.



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MR. FORTUIN: He doesn't know how many lawyers,  
your Honor.

THE COURT: Yes. There are a lot.

MR. FORTUIN: 10 o'clock tomorrow morning.

THE COURT: I understand that this is going to be  
that rare treat when there are no applications?

MR. SUNDEN: Judge, may I inquire if you had  
any communications with the Court of Appeals regarding  
tomorrow morning?

THE COURT: That is what I am going to do right  
now.

What I would appreciate your doing is coming  
back here tomorrow at 10 o'clock, and I will, hopefully,  
be able to pull another rabbit out the second time.

All right, gentlemen, 10 o'clock tomorrow  
morning.

(Adjourned to February 14, 1974, at 10.00 A.M.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
John Barnaba (Resumed)			1972	1900 1978
			1997	1998
Albert C. Logan	2006	2030		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
3549-A	1931	
63-C	2014	